3014.

SUPREME COURT OF THE UNITED STATES.

No. 69.

JAMES H. SUYDAM, PLAINTIFF IN ERROR,

vs.

WILLIAM H. WILLIAMSON, DAVID R. WILLIAMSON, MARY A. WILLIAMSON, ISABELLA WILLIAMSON, CATHARINE B. WILLIAMSON, CHARLOTTE A. WILLIAMSON, RUPERT J. COCHRAN, ISABELLA M. COCHRANE, AND BAYARD CLARKE.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

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GIDEON, Print.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the justices of the Circuit Court of the United States for the southern district of [L. S.] NewYork, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in an action which is in the said circuit court of the United States for the southern district of New York, before you, between Williamina H. Williamson, David R. Williamson, Mary A. Williamson, Isabella Williamson, Catharine B. Williamson, Charlotte A. Williamson, Rupert J. Cochran, Isabella M. Cochrane, and Bayard Clarke, plaintiffs, and James H. Suydam, defendants, manifest error hath happened to the great damage of the said James H. Suydam, as by the complaint appears, and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the first Monday of December, 1855, in the said Supreme Court of the United States, to be then and there held, that the record and proceedings being inspected, the said Supreme Court of the United States may cause further to be done therein, what of right, according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 18th day of December, in the year one thousand eight hundred and fifty-four.

JOHN W. NELSON, *Clerk.*

N. DANE ELLINGWOOD, *Att'y.*

The answer of the honorable the judges of the circuit court of the United States for the southern district of New York, containing the citation, judgment, record, and bill of exceptions in the within entitled cause, as appears by the schedules hereunto annexed.

[L. S.] KENNETH G. WHITE, *Clerk.*

SUPREME COURT OF THE UNITED STATES.

JAMES H. SUYDAM, pl'ff in error,
vs.
WILLIAMINA H. WILLIAMSON et al., def'ts in error.

CITY AND COUNTY OF NEW YORK,
Southern district of New York, ss.

Francis T. Shankland, of the city of New York, being duly sworn, says, that on the 3d day of November, 1855, he served upon

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the justices of the Circuit Court of the United States for the southern district of [L. S.] NewYork, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in an action which is in the said circuit court of the United States for the southern district of New York, before you, between Williamina H. Williamson, David R. Williamson, Mary A. Williamson, Isabella Williamson, Catharine B. Williamson, Charlotte A. Williamson, Rupert J. Cochran, Isabella M. Cochrane, and Bayard Clarke, plaintiffs, and James H. Suydam, defendants, manifest error hath happened to the great damage of the said James H. Suydam, as by the complaint appears, and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the first Monday of December, 1855, in the said Supreme Court of the United States, to be then and there held, that the record and proceedings being inspected, the said Supreme Court of the United States may cause further to be done therein, what of right, according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 18th day of December, in the year one thousand eight hundred and fifty-four.

JOHN W. NELSON, *Clerk.*

N. DANE ELLINGWOOD, *Att'y.*

The answer of the honorable the judges of the circuit court of the United States for the southern district of New York, containing the citation, judgment, record, and bill of exceptions in the within entitled cause, as appears by the schedules hereunto annexed.

[L. S.] KENNETH G. WHITE, *Clerk.*

SUPREME COURT OF THE UNITED STATES.

JAMES H. SUYDAM, pl'ff in error,
vs.
WILLIAMINA H. WILLIAMSON et al., def'ts in error.

CITY AND COUNTY OF NEW YORK,
Southern district of New York, ss.

Francis T. Shankland, of the city of New York, being duly sworn, says, that on the 3d day of November, 1855, he served upon

James S. Sluyter, attorney for the defendants in the above entitled cause, personally, a copy of the annexed citation in this action, by delivering said copy citation to, and leaving the same with, the said James S. Sluyter, at his office, No. 82 Broadway, in the city of New York.

And deponent further says, that on the 5th day of November instant, he served upon Bayard Clarke, one of the defendants in the above entitled cause, personally, a copy of the annexed citation in this action, by delivering said copy citation to, and leaving the same with, the said Bayard Clarke, at his residence, No. 45 Lafayette Place, in the city of New York.

And deponent further says, that on the 9th day of Nov'r inst., he filed a copy of the annexed citation with the clerk of the circuit court of the United States in the southern district of New York, by delivering said copy citation to, and leaving the same with, Richard E. Stilwell, esq., deputy clerk of the said circuit court of the United States, at the office of the said clerk, corner of College Place and Murray street, in the said city of New York.

FRANK T. SHANKLAND.

Sworn before me, this 9th day of Nov'r, 1855.

R. E. STILWELL,
U. S. Com'r.

UNITED STATES OF AMERICA, *ss.*

To Williamina H. Williamson, David R. Williamson, Mary A. Williamson, Isabella Williamson, Catharine B. Williamson, Charlottee A. Williamson, Rupert J. Cochrane, Isabella M. Cochrane, and Bayard Clarke, greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States to be held at the city of Washington on the first Monday of December, 1855, pursuant to a writ of error filed in the office of the clerk of the circuit court of the United States for the southern district of New York, wherein James H. Suydam is plaintiff, and Williamina H. Williamson, David R. Williamson, Mary A. Williamson, Isabella Williamson, Catharine B. Williamson, Charlotte A. Williamson, Rupert J. Cochrane, Isabella M. Cochrane, and Bayard Clarke, are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel R. Betts, justice of the said circuit court of the United States for the southern district of New York, at the city of New York, the 19th day of Dec'r, one thousand eight hundred and fifty-four.

SAM'L R. BETTS.

Circuit Court of the United States for the southern district of New York, in the second circuit.

Pleas before the judges of the Circuit Court of the United States of America for the southern district of New York, in the second circuit, the fifteenth day of September, one thousand eight hundred and forty-five.

Witness Hon. Roger B. Taney, chief justice of the Supreme Court of the United States.

ALEXANDER GARDINER, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Be it remembered, that on the fifteenth day of August, in the year of our Lord one thousand eight hundred and forty-five, in the present April term of this court, before the circuit court of the United States of America for the southern district of New York, in the second circuit, at the city of New York, in the said southern district, before the judges of the said court, came the plaintiffs, Charles A. Williamson and Catharine H., his wife, Rupert J. Cochran and Isabella M., his wife, and Bayard Clarke, by Stephen J. Field, their attorney, and brought into the said court, before the aforesaid judges thereof, their certain declaration against James H. Suydam, being in custody, &c., in a plea of ejectment, which said declaration follows, in these words; that is to say:

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Charles A. Williamson and Catharine H., his wife, citizens of the State of Maryland, Rupert J. Cochran and Isabella M., his wife, citizens of the State of Massachusetts, and Bayard Clark, a citizen of the State of New Jersey, plaintiffs, by Stephen J. Field, their attorney, complain of James H. Suydam, a citizen of the State of New York, defendant, being in custody, &c.

For that, whereas the said plaintiffs heretofore, to wit, on the first day of May, in the year one thousand eight hundred and forty-five, were possessed of a certain piece or parcel of land, with the appurtenances, situated in the sixteenth ward of the city of New York, within the southern district of New York, of the value of three thousand dollars and upwards, which said piece or parcel of land, marked off and divided into two lots, is designated on a certain map, entitled "Map of lands in the sixteenth ward of the city of New York, the property of the heirs of Mary Clarke, deceased, made by George B. Smith, city surveyor, and dated April 6th, 1837, (a copy whereof is on file in the office of register of the city and county of New York,) by the number sixty-four (64) and sixty-five (65), and bounded, taken together, as follows: Beginning at a point on the northerly line of Twenty-fourth street, distant two hundred feet; westerly from the northwest corner of Ninth avenue and Twenty-fourth street; running thence westerly along said northerly line fifty feet; thence northerly, parallel with Ninth

avenue, ninety-eight feet nine inches to the middle of the block between Twenty-fourth and Twenty-fifth streets, and to a point equidistant from the two; thence easterly, parallel with Twenty-fourth street, fifty feet; thence southerly, parallel with Ninth avenue, ninety-eight feet nine inches to the place of beginning; which said premises the said plaintiffs claim in fee—the said Charles in right of the said Catharine, and the said Rupert in right of the said Isabella; and the said plaintiffs being so possessed thereof, the said defendant afterwards, to wit, on the second day of May, one thousand eight hundred and forty-five, entered into and upon the said premises and ejected the said plaintiffs therefrom, and unlawfully withholds from them the possession thereof.

And also for that, whereas the said Charles A. Williamson, and Catharine H., his wife, heretofore, to wit, on the first day of May, one thousand eight hundred and forty-five, were possessed of one equal undivided third part of all that certain other piece or parcel of land, with the appurtenances, situated in the sixteenth ward of the city of New York, within the southern district of New York, which said piece or parcel of land marked off and divided into two lots, is designated on a certain map, entitled "Map of lands in the sixteenth ward of the city of New York, within the southern district of New York, which said piece or parcel of land marked off and divided into two lots, is designated on a certain map, entitled "Map of lands in the sixteenth ward of the city of New York, the property of the heirs of Mary Clark, deceased, made by George B. Smith, city surveyor, and dated April 6, 1837, (a copy whereof is on file in the office of register of the city and county of New York,) by the numbers sixty-four (64) and sixty-five (65), and bounded, taken together, as follows: Beginning at a point in the northerly line of Twenty-fourth street, distant two hundred feet, westerly from the northwest corner of Ninth avenue and Twenty-fourth street; running thence westerly along said northerly line fifty feet; thence northerly, parallel with Ninth avenue, ninety-eight feet nine inches to the middle of the block, between Twenty-fourth and Twenty-fifth streets, and to a point equidistant from the two; thence easterly, parallel with Twenty-fourth street, fifty-feet; thence southerly parallel with Ninth avenue, ninety-eight feet nine inches to the place of beginning, which said equal undivided third part of the said premises the said Charles A. Williamson, and Catharine H., his wife, claim in fee, the said Charles in right of the said Catharine; and the said plaintiffs being so possessed thereof, the said defendants afterwards, to wit, on the second day of May, one thousand eight hundred and forty-five, entered into and upon the said equal undivided third part of the said premises, and ejected the said plaintiffs, Charles A. Williamson, and Catharine H., his wife, therefrom, and unlawfully withholds from them the possession thereof.

And also for that, whereas the said Rupert J. Cochran, and Isabella M., his wife, heretofore, to wit, on the first day of May, one thousand eight hundred and forty-five, were possessed of one equal undivided

third part of all that certain other piece or parcel of land, with the appurtenances, situated in the sixteenth ward of the city of New York, within the southern district of New York, which said piece or parcel of land marked off and divided into two lots, is designated on a certain map, entitled "Map of lands in the sixteenth ward of the city of New York, the property of the heirs of Mary Clarke, deceased," made by George B. Smith, city surveyor, and dated April 6th, 1837, (a copy whereof is on file in the office of register of the city and county of New York,) by the numbers sixty-four (64) and sixty-five (65), and bounded, taken together, as follows: Beginning at a point on the northerly line of Twenty-fourth street, distant two hundred feet, westerly from the northwest corner of Ninth avenue and Twenty-fourth street; running thence westerly along said northerly line fifty feet; thence northerly, parallel with Ninth avenue, ninety-eight feet nine inches to the middle of the block, between Twenty-fourth and Twenty-fifth streets, and to a point equidistant from the two; thence easterly, parallel with Twenty-fourth street, fifty feet; thence southerly, parallel with Ninth avenue, ninety-eight feet nine inches, to the place of beginning, which said equal undivided third part of the said premises the said Rupert J. Cochran, and Isabella M., his wife, claim in fee, in right of the said Isabella; and being so possessed thereof, the said defendants afterwards, to wit, on the second day of May, one thousand eight hundred and forty-five, entered into and upon the said equal undivided third part of the said premises, and ejected the said plaintiffs, Rupert J. Cochran, and Isabella M., his wife, therefrom, and unlawfully withholds from them the possession thereof.

And also for that, whereas the said Bayard Clarke heretofore, to wit, on the first day of May, one thousand eight hundred and forty-five, was possessed of one equal undivided third part of all that certain other piece or parcel of land, with the appurtenances, situated in the sixteenth ward of the city of New York, within the southern district of New York, which said piece or parcel of land marked off and divided into two lots, is designated on a certain map, entitled Map of lands in the sixteenth ward of the city New of York, the property of the heirs of Mary Clarke, deceased, made by George B. Smith, city surveyor, and dated April 6th, 1837, (a copy whereof is on file in the office of register of the city and county of New York,) by the numbers sixty-four (64) and sixty-five (65), and bounded, taken together, as follows: Beginning at a point in the northerly line of Twenty-fourth street, distant two hundred feet westerly from the northwest corner of Ninth avenue and Twenty-fourth street; running thence westerly along said northerly line fifty feet; thence northerly, parallel with Ninth avenue, ninety-eight feet nine inches to the middle of the block between Twenty-fourth and Twenty-fifth streets, and to a point equidistant from the two; thence easterly, parallel with Twenty-fourth street, fifty feet; thence southerly, parallel with Ninth avenue, ninety-eight feet nine inches, to the place of beginning; which said equal undivided third part of said premises the said Bayard Clarke claims in fee; and

being so possessed thereof, the said defendant afterwards, to wit, on the second day of May, one thousand eight hundred and forty-five, entered into and upon the said equal undivided third part of the said premises and ejected the said plaintiff, Bayard Clarke, therefrom, and unlawfully withholds from him the possession thereof, to the damage of the said plaintiffs, Charles A. Williamson and Catharine H., his wife, Rupert J. Cochran and Isabella M., his wife, and Bayard Clarke, of two thousand dollars; and thereupon they bring suit, &c. And the said James H. Suydam, defendant in this suit, by Hervey P. Wanmaker, his attorney, comes and says, he is not guilty of unlawfully withholding the premises claimed by the said Charles A. Williamson and Catharine H., his wife, Rupert J. Cochran and Isabella M., his wife, and Bayard Clarke, plaintiffs in this suit, as alleged in the said declaration of the said plaintiffs; and of this the said defendant puts himself upon the country, and the said plaintiff do the like, &c.

Therefore the issue above joined is ordered to be tried at the circuit court of the United States of America for the southern district of New York, to be held at the City Hall, in the city of New York, in the said southern district of New York, on the first Monday of October, one thousand eight hundred and forty-five.

And thereupon the process thereof is continued between the parties aforesaid, of the plea aforesaid, in this same court, before the judges thereof, until the first Monday of October, one thousand eight hundred and forty-five.

And hereupon the process thereof is continued between the parties aforesaid, of the plea aforesaid, in this same court, before the judges thereof, until the first Monday of October, in the year one thousand eight hundred and forty-nine.

And the same day is given to the parties aforesaid at the same place, at which said last mentioned day, before the judges aforesaid, at the place last aforesaid, come as well the said Rupert J. Cochran and Isabella M., his wife, and Bayard Clarke, by their attorney aforesaid, as the said defendant, by his attorney aforesaid, and the said Charles A. Williamson and Catharine H., his wife, come not, and hereupon the said Rupert J. Cochran and Isabella M., his wife, give the court here to understand, and be informed, that after the last continuance of the plea aforesaid, and before this day, to wit, on the ninth day of May, 1849, at Edinburgh, in Scotland, the said Catharine H. Williamson died, and in the fourteenth day of May, in the same year, at Fort Leavenworth, in the State of Missouri, the said Charles A. Williamson also died, leaving surviving them as their only children and heirs at law, William H. Williamson, David R. Williamson, Mary A. Williamson, Isabella Williamson, Catharine B. Williamson, and Charlotte A. Williamson, which allegations the said defendant doth not deny, but admits the same to be true. Therefore let no further proceedings be had in this cause, in the name of the said Charles A. Williamson and Catharine H. Williamson, but let the same stand revived in the names of the said William H. Williamson, David R. Williamson,

Mary A. Williamson, Isabella Williamson, Catharine B. Williamson, and Charlotte A. Williamson, Rupert J. Cochran, Isabella M., his wife, and Bayard Clarke, as plaintiffs; and thereupon the said plaintiffs come into court and substituted James J. Sluyter as their attorney, in the place and stead of Stephen J. Field, their attorney aforesaid, and hereupon the issue above joined is ordered by the said court to be tried at the circuit court of the United States of America for the southern district of New York, in the second circuit, to be held at the City Hall in the city of New York, in the said southern district of New York, on the first Monday of April, in the year one thousand eight hundred and fifty.

Afterwards, that is to say, on the day and at the place last mentioned, before the judges of the said circuit court of the United States of America for the southern district of New York, in the second circuit, according to the form of the statute in such case made and provided, come as well the above named plaintiffs as the above named defendant, by their respective attorneys above mentioned, and the jurors of the jury summoned to try the said issue being called also, come, who to speak the truth of the matter above contained, being choses tried and sworn, say, upon their oath, that he the said defendant is guilty of unlawfully withholding the premises claimed by the plaintiffs, as alleged in the said declaration, being the piece or parcel of land marked off and divided into two lots, with the appurtenances therein described; and that the said Williamina H. Williamson, David R. Williamson, Mary A. Williamson, Isabella Williamson, Catharine B. Williamson, Charlotte A. Williamson, Rupert J. Cochran, Isabella M. Cochran, and Bayard Clark, are well entitled to hold the same in fee, as above complained against the said James H. Suydam and others, assess the damages of the said plaintiffs, by reason of the matters aforesaid, over and above their costs and charges by them about their suit in this behalf expended to six cents, and for those costs and charges to six cents. And because the said court, before the aforesaid judges thereof, now here, are not yet advised what judgment to give of and upon the premises, therefore the process thereof is continued between the parties aforesaid, of the plea aforesaid, in this same court, before the judges thereof, until the first Monday of October, of the term of October, in the year one thousand eight hundred and fifty, at the said City Hall, in the city of New York, and the same day is given to the parties aforesaid, at the same place, to hear the judgment of the said court thereupon, for that the said court, before the aforesaid judges thereof, now here, are not yet advised thereof, &c.

At which last mentioned day, before the judges aforesaid, at the place last aforesaid, come the parties aforesaid, by their respective attorneys aforesaid, and hereupon all and singular the premises being seen, and by the court here before the judges thereof fully understood, and mature deliberation being thereupon had, it is considered by the same court that the said Williamina H. Williamson, David R. Williamson, Mary A. Williamson, Isabella Williamson, Catharine B. Williamson, and Charlotte A. Williamson, Rupert J. Cochran, and

being so possessed thereof, the said defendant afterwards, to wit, on the second day of May, one thousand eight hundred and forty-five, entered into and upon the said equal undivided third part of the said premises and ejected the said plaintiff, Bayard Clarke, therefrom, and unlawfully withholds from him the possession thereof, to the damage of the said plaintiffs, Charles A. Williamson and Catharine H., his wife, Rupert J. Cochran and Isabella M., his wife, and Bayard Clarke, of two thousand dollars; and thereupon they bring suit, &c. And the said James H. Suydam, defendant in this suit, by Hervey P. Wanmaker, his attorney, comes and says, he is not guilty of unlawfully withholding the premises claimed by the said Charles A. Williamson and Catharine H., his wife, Rupert J. Cochran and Isabella M., his wife, and Bayard Clarke, plaintiffs in this suit, as alleged in the said declaration of the said plaintiffs; and of this the said defendant puts himself upon the country, and the said plaintiff do the like, &c.

Therefore the issue above joined is ordered to be tried at the circuit court of the United States of America for the southern district of New York, to be held at the City Hall, in the city of New York, in the said southern district of New York, on the first Monday of October, one thousand eight hundred and forty-five.

And thereupon the process thereof is continued between the parties aforesaid, of the plea aforesaid, in this same court, before the judges thereof, until the first Monday of October, one thousand eight hundred and forty-five.

And hereupon the process thereof is continued between the parties aforesaid, of the plea aforesaid, in this same court, before the judges thereof, until the first Monday of October, in the year one thousand eight hundred and forty-nine.

And the same day is given to the parties aforesaid at the same place, at which said last mentioned day, before the judges aforesaid, at the place last aforesaid, come as well the said Rupert J. Cochran and Isabella M., his wife, and Bayard Clarke, by their attorney aforesaid, as the said defendant, by his attorney aforesaid, and the said Charles A. Williamson and Catharine H., his wife, come not, and hereupon the said Rupert J. Cochran and Isabella M., his wife, give the court here to understand, and be informed, that after the last continuance of the plea aforesaid, and before this day, to wit, on the ninth day of May, 1849, at Edinburgh, in Scotland, the said Catharine H. Williamson died, and in the fourteenth day of May, in the same year, at Fort Leavenworth, in the State of Missouri, the said Charles A. Williamson also died, leaving surviving them as their only children and heirs at law, William H. Williamson, David R. Williamson, Mary A. Williamson, Isabella Williamson, Catharine B. Williamson, and Charlotte A. Williamson, which allegations the said defendant doth not deny, but admits the same to be true. Therefore let no further proceedings be had in this cause, in the name of the said Charles A. Williamson and Catharine H. Williamson, but let the same stand revived in the names of the said William H. Williamson, David R. Williamson,

Mary A. Williamson, Isabella Williamson, Catharine B. Williamson, and Charlotte A. Williamson, Rupert J. Cochran, Isabella M., his wife, and Bayard Clarke, as plaintiffs; and thereupon the said plaintiffs come into court and substituted James J. Sluyter as their attorney, in the place and stead of Stephen J. Field, their attorney aforesaid, and hereupon the issue above joined is ordered by the said court to be tried at the circuit court of the United States of America for the southern district of New York, in the second circuit, to be held at the City Hall in the city of New York, in the said southern district of New York, on the first Monday of April, in the year one thousand eight hundred and fifty.

Afterwards, that is to say, on the day and at the place last mentioned, before the judges of the said circuit court of the United States of America for the southern district of New York, in the second circuit, according to the form of the statute in such case made and provided, come as well the above named plaintiffs as the above named defendant, by their respective attorneys above mentioned, and the jurors of the jury summoned to try the said issue being called also, come, who to speak the truth of the matter above contained, being choses tried and sworn, say, upon their oath, that he the said defendant is guilty of unlawfully withholding the premises claimed by the plaintiffs, as alleged in the said declaration, being the piece or parcel of land marked off and divided into two lots, with the appurtenances therein described; and that the said Williamina H. Williamson, David R. Williamson, Mary A. Williamson, Isabella Williamson, Catharine B. Williamson, Charlotte A. Williamson, Rupert J. Cochran, Isabella M. Cochran, and Bayard Clark, are well entitled to hold the same in fee, as above complained against the said James H. Suydam and others, assess the damages of the said plaintiffs, by reason of the matters aforesaid, over and above their costs and charges by them about their suit in this behalf expended to six cents, and for those costs and charges to six cents. And because the said court, before the aforesaid judges thereof, now here, are not yet advised what judgment to give of and upon the premises, therefore the process thereof is continued between the parties aforesaid, of the plea aforesaid, in this same court, before the judges thereof, until the first Monday of October, of the term of October, in the year one thousand eight hundred and fifty, at the said City Hall, in the city of New York, and the same day is given to the parties aforesaid, at the same place, to hear the judgment of the said court thereupon, for that the said court, before the aforesaid judges thereof, now here, are not yet advised thereof, &c.

At which last mentioned day, before the judges aforesaid, at the place last aforesaid, come the parties aforesaid, by their respective attorneys aforesaid, and hereupon all and singular the premises being seen, and by the court here before the judges thereof fully understood, and mature deliberation being thereupon had, it is considered by the same court that the said Williamina H. Williamson, David R. Williamson, Mary A. Williamson, Isabella Williamson, Catharine B. Williamson, and Charlotte A. Williamson, Rupert J. Cochran, and

Isabella M., his wife, and Bayard Clark, do recover against the said James H. Suydam the possession of the said premises, according to the said verdict of the jury. And it is further considered, that the said plaintiffs do recover against the said defendant their damages, costs and charges, by the jury aforesaid, in form aforesaid, assessed, and also $212 23 for their said costs and charges now here adjusted, if accrued to the said plaintiffs, and with their assent, which said damages, costs and charges, in the whole amount to $212 29.

And hereupon the said Willoamma H. Williamson, David R. Williamson, Mary A. Williamson, Isabella Williamson, Catharine B. Williamson, and Charlotte A. Williamson, Rupert J. Cochron, Isabella M., his wife, and Bayard Clarke pray the writ of the President of the United States of America, to be directed to the marshal of the southern district of New York, to cause them to have possession of the said premises according to the price, form, and effect of the said recovery. And it is granted to them, returnable before the said judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the City Hall, in the city of New York.

Judgment signed this 6th day of December, in the year one thousand eight hundred and fifty-four.

R. E. STILWELL,
Deputy Clerk.

CIRCUIT COURT U. S.,
Southern dist., New York.

WILLIAMINA H. WILLIAMSON and others
against
JAMES H. SUYDAM. } Case.

This is an action of ejectment for two lots in the 16th ward of the city of New York. The declaration is in the usual form; the plea is not guilty. Either party may refer to the pleadings as part of this case.

The plaintiff gave in evidence an exemplified copy of the will of Mary Clark, executed in due form so as to pass real estate, and duly proved in the supreme court of this State, of which a copy is hereto annexed.

It was then admitted by the defendant's counsel that Mary Clark was seized and possessed of the premises described in the said will as "all that part of my said farm at Greenwich aforesaid, called Chelsea, lying to the northward of the line herein before directed to be drawn from the Greenwich road to the Hudson river, twelve feet to the northward of the fence standing behind the house now occupied by John Hall, bounded southerly by the said line, northerly by the lands of Cornelius Ray, easterly by the Greenwich road, and westerly by the Hudson, including that part of my said farm now under lease to Robert Lenox," at the time of the making of the will, and thence until her death, which took place in July, 1802; that the said premises included the lots claimed herein; that the said trustees, Benjamin

Moore and Charity, his wife, and Elizabeth Munsell are all dead, the said Benjamin Moore having died on the twenty-seventh day of February, 1816, Elizabeth Munsell before the year 1820, and Charity Moore on the 4th day of December, 1838; that Thomas B. Clarke was married in 1803; that his wife died in August, 1815, and himself on the 1st day of May, 1826; that he left three children surviving him, Catharine, Isabella, and Bayard; that he had four other children, all of whom died before him without having had any children, or having been married; that Catharine was born on the 5th of June, 1807, and was married to Charles A. Williamson on the 10th of May, 1827; that Isabella was born on the 11th day of June, 1809, and was married to Rupert J. Cochran on the 4th day of June, 1835; that Bayard was born on the 17th day of March, 1815; all of whom were living at the commencement of this suit. It was also admitted that the defendant was the actual occupant of the premises at the commencement of this suit, on the thirteenth day of August, 1845, and that the premises claimed are of greater value than two thousand dollars.

Ages of children.

The plaintiffs thereupon rested.

The defendants' counsel then proved the acts of the legislature, the deed of Clement C. Moore, the petitions to the legislature and to the chancellor, the master's reports, the orders of the chancellor, the extracts from the journals of the two houses, of which copies are hereto annexed; these were all objected to by the plaintiff's counsel, and were read subject to the objection.

The defendants' counsel then offered in evidence a deed from Thomas B. Clarke to Peter McIntyre, of which the following is a copy.

[Deed—Clarke to McIntyre.]

This indenture made this twentieth day of October, in the year of our Lord one thousand eight hundred and eighteen, between Thomas B. Clarke, of the city of New York, gentleman, of the first part, and Peter McIntyre, of the same place, of the second part; whereas the said Thomas B. Clarke, by virtue of sundry conveyances, acts of the legislature, and orders of the court of chancery of the State of New York, hath been empowered to sell, or mortgage, or convey in satisfaction of any debt due from him to any person or persons, the southern moiety of the estate at Greenwich, devised by Mary Clarke, deceased, for the benefit of the said Thomas B. Clarke and his children, or any part thereof; and whereas the said Thomas B. Clarke is indebted to the said party of the second part in a large sum of money: Now, therefore, this indenture witnesseth that the said Thomas B. Clarke, in consideration of the premises, and of thirty-seven hundred and fifty dollars, lawful money of the United States, to him in hand paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by

these presents doth grant, bargain, sell, alien, enfeoff, convey and confirm unto the said party of the second part, his heirs and assigns forever, all those lots of ground situate, lying, and being in the ninth ward of the city of New York, known and distinguished on a certain map of the property of the said Thomas B. Clarke, made by Amos Corning and Ural W. Freeman, city surveyors, by the numbers one hundred seventeen (117) and one hundred and eighteen (118); also one hundred and thirty-one (131), one hundred and thirty-two (132) and one hundred and thirty-three (133); also one hundred and thirty-four (134), one hundred and thirty-five (135), one hundred and thirty-six (136), one hundred and thirty-seven (137), one hundred and thirty-eight (138), one hundred and thirty-nine (139); also one hundred and five (105), one hundred and six (106), one hundred and seven (107), one hundred and eight (108), one hundred and nine (109); also sixty-four (64), sixty-five (65), sixty-six (66) and sixty-seven (67). Bounded as follows: lots Nos. 117 and 118 are bounded westerly by the Hudson river, northerly by lot No. 119, easterly by the Tenth avenue, and southerly by Twenty-fifth street. Lots Nos. 131, 132, 123, are bounded westerly on the Tenth avenue, northerly by lot No. 130, easterly by lot No. 134, and southerly by Twenty-fifth street. Lots Nos. 134, 135, 136, 137, 138 and 139, are bounded westerly by lots Nos. 130, 131, 132 and 133, northerly by lots Nos. 184, 185, 186, 187, 188, and 189, easterly by lot No. 140, and southerly by Twenty-fifth street. Lots Nos. 105, 106, 107, 108 and 109, are bounded northerly by 25th street, easterly by lot No. 110, southerly by lots Nos. 66, 67, 68, 69 and 70, and westerly by lot No. 104 Lots Nos. 64, 65, 66 and 67, are bounded southerly by 24th street, westerly by lot No. 68, northerly by lots Nos. 108, 109, 110 and 111, and easterly by lot No. 63: With all and singular the privileges, advantages, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises unto the said party of the second part, his heirs and assigns forever. And the said Thomas B. Clark, for himself, his heirs, executors, and administrators, doth covenant, grant, promise, and agree to and with the said party of the second part, his heirs and assigns, that the above bargained premises, in the quiet and peaceful enjoyment of the said party of the second part, his heirs and assigns, against all and every person lawfully claiming, or to claim, the whole or any part of the above mentioned and described premises, shall and will warrant and defend forever.

In witness whereof the said party of the first part hath hereunto set his hand and seal on the day and in the year first above written.

T. B. CLARKE. [L. S.]

Sealed and delivered in the presence of—
SAMUEL CURTISS.

STATE OF NEW YORK, *ss:*

On this twentieth day of October, in the year 1818, before me, personally appeared Thomas B. Clarke, known to me to be the same person described in and who executed this indenture, and he duly acknowledged that he executed the same. There being no alteration therein, I allow the same to be recorded.

JOHN C. HAMILTON,
Commissioner.

[Master's approved.]

The defendants' counsel then proved that there was a certificate on the inside of this original deed, but not recorded, as follows: "Having examined the within deed, I approve of it as to manner and form.—Dec. 14, 1818.—James A. Hammilton, master in chancery."

The deed was objected to by the plaintiff's counsel as made without due authority of law, and as not made in pursuance of the said acts of the legislature, and as not within the orders of the chancellor, and as not duly approved, and as being otherwise invalid.

The objections were reserved, and the deed was read in evidence subject to the objections. The map mentioned in the deed may be referred to as part of this case.

The defendants' counsel then read in evidence, subject to objection, all legal objections thereto being reserved, a deed endorsed on the other from James A. Hammilton to Peter McIntyre, of which the following is a copy:

[Deed from Hamilton to McIntyre.]

Know all men by these presents: That whereas John Wallis and Henry Simmons, together with one Robert Stewart, having obtained three several judgments against the within grantor, Thomas B. Clarke, whereon three several writs of fieri facias were issued; and whereas all the estate, right, title, and interest of the said Thomas B. Clarke to the premises within mentioned and described, together with divers other premises, was sold by the sheriff of the city and county of New York under and by virtue of the aforesaid writs; and whereas all the estate, right, title, and interest of the said Thomas B. Clarke, so sold as aforesaid, was his life estate in and to the said premises; and whereas the said John Wallis and Henry Simmons became the purchasers thereof; and whereas the said John Wallis and Henry Simmons, by indenture bearing date the nineteenth day of April, in the year of our Lord one thousand eight hundred and seventeen, and which was recorded in the office of register in and for the city and county of New York, in Liber No. 20 of Conveyances, page 475, on the eighth day of May, one thousand eight hundred and seventeen, as by reference thereto will more fully and at large appear, conveyed to James A. Hamilton, of the city of New York, esquire, in trust for the benefit of the said Thomas B. Clarke, all their right, title, and interest in and to the premises in the within indenture mentioned and described, together

with divers other premises in the said indenture above referred to, as by reference to the record thereof will at large appear: Now, therefore, know ye, that I, James A. Hammilton, for the purpose of carrying into effect the said trust, and at the request of the said Thomas B. Clarke, which said request is testified by his having executed the within indenture, and in consideration of one dollar to me in hand paid by the within named Peter McIntyre, party of the second part to the within indenture, have, and by these presents do, remise, release, and quit-claim to the said Peter McIntyre, and to his heirs and assigns, all my right, title, and interest, in and to the said twenty lots of ground, particularly mentioned and described in the within indenture, together with the appurtenances, unto the said Peter McIntyre, his heirs and assigns, and to his and their only proper use and benefit and behoof.

In witness whereof I have hereunto set my hand and seal, this fourteenth day of December, in the year of our Lord one thousand eight hundred and eighteen.

JAMES A. HAMMILTON. [L. S.]

Sealed and delivered in the presence of—
JOHN C. HAMMILTON.

STATE OF NEW YORK, *ss.*

On this fourteenth day of December, in the year 1818, before me, personally appeared James A. Hammilton, known to me to be the same person described in, and who executed, this instrument in writing, and he duly acknowledged that he had executed the same; there being no alteration therein, I allow the same to be recorded.

JOHN C. HAMMILTON, *Commis'r.*

The said Hamilton held the life estate under a deed from John Wallis and Henry Simmons, who had purchased Thomas B. Clarke's life estate in the whole demised property under executions against him, and received a sheriff's deed therefor.

[Deposition of P. McIntyre.]

The plaintiff's counsel then read in evidence the deposition of Peter McIntyre, of which the following is a copy, subject to all legal objections as to the competency, by true evidence, this deposition being admitted by consent, the same as if the witness was present in court.

Peter McIntyre, of number 99 Houston street, in the city of New-York, being sworn and examined, testified as follows:

Q. What was the consideration of the deed executed to you by Thomas B. Clarke, bearing date the 20th of October, 1818?

A. I don't know how to answer that exactly. Mr. Clarke came to board with me at that time; Mr. Dickinson brought him there. Dickinson and Clarke came to me and told me that he had no money, but property he wanted to place in my hands, so as to board him and his children; he continued on, and there was a bill at Tammany Hall; he had been boarding there, and had no money; he came to me and told me he had to pay that bill or go to jail, one or the other, and

I agreed to pay it; I think it was about $150 that Mr. Mather, the keeper of Tammany Hall, had against him. Occasionally he wanted a little money, which I always let him have for the children's use. Himself and his son, Clement, they boarded a considerable length of time—I can't tell exactly, two or three years; my books are all destroyed; I can't describe positively the manner in which the settlement took place, at different times; I remember at one time Mr. Hamilton, the master in chancery, was present, that signed off with him. I gave him two bonds or notes, one for $1050 or $950, and one for $550, to pay for his youngest children that year; I was short of money at that time. The oldest children boarded with me; Clement continued for a length of time; I don't remember dates now. I took the lots in good faith and confidence; Mr. Dickinson said it was all right.

Q. Was there any other consideration than that you have stated?

A. Only his boarding and his children that made up the amount, I believe; he went away in my debt afterwards.

Q. Have you the bills or any entries in your books respecting these transactions?

A. No, I haven't any papers at all; they are all destroyed; I never expected to be called upon anything about the property.

Q. Are these your books of account? referring to four books in the room.

A. I believe they are; looking at them, he says they are; they have been my books.

Q. What years do the accounts therein cover?

A. You see that by the dates—mem.—the first book begins at page 20, and the first date is January 28, 1816; all the dates to page 69 are in that same year when October 17, 1816, appears. The next entry is December 1st, 1826; and the last entries are dated in 1827, on pages 59, 60, 61. It appears to be part of a book only, and much multilated. The other books are all subsequent to 1822, and running up irregularly to 1829.

Q. Were the bonds or notes you speak of given before or after the execution of the deed?

A. After, I think.

Q. How long after?

A. I can't remember.

Q. Was the board bill contracted before or after the execution of the deed?

A. The board bill was contracting all the time.

Q. Was the deed executed after all the board bill had been contracted, or while it was contracting?

A. It was still going on, you know, the boarding.

Q. Was there any other consideration, in whole or in part, for the deed except the board bills and the two notes or bonds you speak of?

A. I paid for some dry goods; one bill I know, some $300, and others occasionally as they were created—the children's clothing. There were some taxes and assessments I paid for him, but I don't remember what they were; I remember paying at one time $10.

Q. Was there any other consideration in whole or in part?
A. I don't remember just now, I can't tell.
Q. Do you remember any other?
A. I think I paid something for Clement—his learning astronomy, I think; he came in for a bill; his father had no money, of course, and I paid it.
Q. Was this paid before or after the execution of the deed?
A. Well, that I don't remember exactly, but it was all the same; they were in the house, and the boarding bill was going on.
Q. How long did Mr. Clarke board with you?
A. That I can't remember—two or three years; I think it was three years.
Q. How many of his children were with him?
A. Well, there were three of them sometimes, but not all the time; Clement continued all the time his father was there.
Q. Did Clement die while at your house?
A. No, he died at Hoboken.
Q. How soon did he die after he left you?
A. I don't remember.
Q. Which of the other children was with Mr. Clarke at your house?
A. The oldest girl and the next one.
Q. Was any son there excepting Clement?
A. No, I believe not; I don't remember exactly; they lived in apartments of their own in my house; I was not in the habit of seeing them often.
Q. So far as you can recollect, was any son there except Clement?
A. Not that I remember; I can't remember now.
Q. How long were the two daughters there?
A. That I can't tell; my wife had the management; she is dead.
Q. Can you tell whether they were there one month or one year?
A. Oh, they were there more than a month, of course.

Cross-examination.

Q. What is your age?
A. About seventy-nine.
Q. How long is it since you left off business?
A. It is about 12 years; my wife died in 1842, and I have done no business since.
Q. Are you at present in firm health and able to go about?
A. No, I am very feeble; I have not been out of doors for two years.
Q. What has become of the rest of your books?
A. I don't know; moving, and the servants have taken them to light fires.
Q. Did you pay the bonds or notes that you have mentioned?
A. I paid them at maturity.
Q. Had you a settlement with Mr. Clarke at the time that Mr. Hamilton, the master in chancery, was present?

A. Yes; he drew the bonds, I believe.

Q. Was that the same time that you got the deed?

A. Mr. Hamilton was present when I got the deed, but I forget whether it was the same day we had the settlement, or not. All the settlements were submitted to Mr. Hamilton for his approval.

P. McINTYRE.

Sworn this 27th of March, 1851.

THOS. J. OAKLY.

[Deposition of H. T. Kennedy.]

The plaintiff's counsel then read in evidence the deposition of Harriet T. Kennedy, of which the following is a copy, subject to all legal objections as to the competency of true evidence, this deposition being admitted by consent, the same as if witness was present in court.

I knew Thomas B. Clarke and Mary, his wife, in their lifetime. The said Thomas B. Clarke died intestate in the month of May, in the year 1826; I never knew or heard of any last will and testament left by him. The said Mary Clarke, his wife, died in August, in the year 1815. The only children which the said Thomas B. Clarke and Mary, his wife, ever had were Clement Clarke, Mary Clarke, Catherine Harrison Clarke, Isabella McCombs Clarke, Maria Theresa Clarke, Jane Clarke, and Bayard Clarke. That the said Clement, Mary, Maria Theresa, and Jane Clarke all died before their said father, not having been married, and not having any children; and that the said Catharine Harrison, Isabella McComb and Bayard, were the only children who survived their said father, and they are now living; that the said Catherine Harrison was born on the 5th day of June, one thousand eight hundred and seven, and was married to Charles A. Williamson, on the 10th day of May, in the year 1827; that Isabella McCombs was born on the 11th day of June, in the year 1809, and was married to Rupert J. Cochran on the 4th day of June, in the year 1835; that the said Bayard was born on the 17th day of March, in the year 1815; that the said Thomas B. Clarke, for some years before the death of his said wife, failed to provide for the support and maintenance of his family, and after her death he did not provide them with the necessaries of life; that he had a small amount of property from the West Indies, received by him, which he appropriated to his own individual purposes. The money received from the West Indies passed through my hands, and I know it was not used for the support of his family. That said Clarke did not from his own means, nor from the means which he received for the benefit of his children, provide for the support and maintenance of his family. The said Clarke did not live with his family uniformly. Soon after the death of his wife he broke up house-keeping, and the children used to board or were supported by their friends. Catherine and Mary went to him with their aunt, Mrs. James Davidson, and were supported by her and her husband; Isabella went to boarding-school, and was supported by her aunt, Charity Clarke; Bayard and Jane were boarded with Mrs. Barns,

and she was paid after the death of the said Thomas B. Clarke, out of the remaining real estate; Clement Clarke boarded with Mrs. Barns, and was a part of the time employed as a clerk in a bank, and supported himself; Thomas B. Clarke boarded a part of the time with Mrs. Barns, and a part of the time at Washington Hall, and at other places.

The said Thomas B. Clarke was always in pecuniary difficulties, and never had the means to provide for his family out of his own property, but means were raised by a sale of the children's property, which he used, and did not apply for their support, as before stated. Maria Theresa was the only child of Thomas B. Clarke, who died before her mother. The time I received the moneys from the West Indies was about 18 months before Clement Clarke died; it was some time in the year 1823, I think; I cannot state positively; I don't know what Thomas B. Clarke did with his money, but whatever of the children's money he got, he used for other purposes than for the support of his children.

Cross-examination.

Q. Was or was not the property deeded to Thomas B. Clarke's children productive?

A. I cannot say whether it was or not.

Q. Was Thomas B. Clarke, prior to 1817, engaged in business?

A. I never knew of Thomas B. Clarke's being engaged in any business in his life, except a short time in a bank, after the death of his wife. He was not able to support his family from the proceeds of his business.

Q. Was this West India property referred to in the direct examination—Thomas B. Clarke's individual property?

A. It was.

Q. Was you present at the contract for the sale of the children's property referred to on your direct examination?

A. I was not.

Q. Were you present at the delivery of the deeds of that property?

A. I was not.

Q. Do you know, of your own knowledge, when that sale took place?

A. I do not.

Q. Do you know what property was sold?

A. I do not.

Q. Do you know what the price paid for the property was?

A. I do not.

Q. How, then, do you know that there was a sale?

A. I learned from Mr. James Davidson, and from general hearsay, that two acts of the legislature were passed, authorizing him to sell, and that the proportion of the children's property was , so that the guardian, Mr. Davidson, could not get hold of it.

Q. Do you know, of your own personal knowledge, that there was a sale of the children's property by Clarke?

A. I do not.

Q. Did you have the charge and management of the concerns of the children of Mr. Clarke, personally?

A. I did not; I have always had a great interest in them; I have always known how they were provided for; I did not superintend the payment of their bills, or the putting them out to board.

Q. Do you know, of your own knowledge, that Mr. Clarke did not support his children?

A. I do know it from my own knowledge.

Q. Did he contribute anything towards their support?

A. Very little.

Q. Do you know anything of a mortgage given by Thomas B. Clarke to a man named Henry Simmons, in 1817?

A. I do not, and never heard of it before.

Q. Do you know, personally, whether Thomas B. Clarke paid wholly or in part, prior to 4 April, 1817, the expenses of his children?

A. I know that two of them were supported by Mr. and Mrs. Davidson after September, 1815. The rest lived with their father in several places; I cannot say how long; it was nearly two years.

[Townsend's Testimony.]

The defendants' counsel here read the testimony of William B. Townsend, the plaintiff's counsel waiving the personal appearance of the witness, but reserving all other objections; which testimony is as follows:

I know Peter McIntyre; I knew him in 1818. I knew these premises—20 lots of ground named in the deed. I was and have been somewhat acquainted with the value of real estate. I think, in 1819, when I went out there and saw them, $100 per lot was a large price for them; they were not worth any more in 1818.

Cross-examined by Mr. Field.

Q. Did you know the circumstances under which the deed was given?

A. I know nothing of the deed. McIntyre told me he had bought the lots. McIntyre and myself went on the ground together to see the lots in July, 1819. Thomas B. Clarke was then living at Washington Hall with McIntyre. I saw no bills for which this deed was given. I do not know anything of Clarke's indebtedness to McIntyre, except Clarke and his children were all living, boarding, there with McIntyre—Clarke's children, I think 3 in number. I don't know that this deed was given for a bill run up for the board of himself and children. I think there were two girls and a boy. He was a widower at that time.

The defendants' counsel then read in evidence, subject to objection, all legal objections thereto being reserved, the following decree of fore-

closure, the order to compel the purchaser to complete his purchase, and the master's deed, of which the following are copies:

[Decree of Foreclosure.]

At a court of chancery held for the State of New York, at the city of New York, on the twenty-fourth day of December, one thousand eight hundred and forty. Present, William T. McCown, vice-chancellor of the first circuit.

MARIA HUMPHRYS, admin'x, &c., RICH'D M. CLARKE, admin'r, &c., of Elijah Humphrys, dec'd,
vs.
PETER McINTYRE.

This cause having this day been brought on to be heard upon the bill of complaint filed therein, taken as confessed by Peter McIntyre, the defendant therein, and upon the report of Philo T. Ruggles, esq., one of the masters of this court, residing in the city of New York, bearing date the twenty-second day of December, 1840, and made in pursuance of an order of this court heretofore made in this cause, whereby it was referred to the said master to compute the amount due to the complainants for principal and interest on the amount or sum of 13,747 dollars 93 cents, heretofore, and on the 10th day of February, 1840, reported due to the complainants, as stated in the said bill of complaint, and also for the costs and expenses of the said complainants, &c., the infant heirs at law of the said Elijah Humphrys, deceased, in a certain suit mentioned in the said bill, and the interest thereon, and to take and to state an account of all moneys paid the complainant, for taxes or otherwise, on account of the premises mentioned in the said bill, and for expenses, costs, and fees, for and by reason of the said premises, making all due allowments for payments made—and by which said report it appears that there was due to the said complainants, at the date of the said report, for principal and interest upon the said moneys so reported due as aforesaid, and for the costs, fees, expenses, advances, disbursements, and payments in the premises, with the interest thereon, after making all due allowance and credits in favor of the defendants, and interest thereon—the sum of thirteen thousand eight hundred and sixteen dollars and thirty-five cents. Whereupon, on reading the said bill, and on reading and filing the said report and an affidavit of Charles C. King, proving that a notice of the pending of this suit, in the form prescribed by the act entitled "An act to reduce the expenses of foreclosing mortgages in the court of chancery," passed May 14, 1840, was filed in the office of the clerk of the city and county of New York, in which county the mortgaged premises described in the bill of complaint in this cause are situated, at least fifty days previous to the hearing of the said cause, and also showing in what manner the said bill was taken as confessed against the said defendants; and on motion of Charles C. King, of counsel for the complainant, it is ordered, adjudged, and decreed, and this court, by virtue of the authority herein vested, doth

order, adjudge, and decree, that the said report, and all things therein contained, do stand ratified and confessed.

And it is further ordered, adjudged, and decreed, that all and singular the premises mentioned in the bill of complaint in this cause and hereinafter described, or so much thereof as may be sufficient to raise the amount due to the complainants for principal, interest, and costs in this cause, and which may be sold separately without material injury to the parties interested, to be sold at public auction, according to the course and practice, by or under the directions of one of the masters thereof residing in the city of New York; that the said sale be made in the county where the said premises or the greater part thereof are situated; that the master give public notice of the time and place of such sale, according to the course and practice of this court, and that any of the parties of this cause may become a purchaser or purchasers in such sale; that the said master execute to the bearer or purchasers of the said premises, or such part or parts thereof as shall be sold, a good and sufficient deed or deeds of conveyance for the same; and that the said master pay to the complainants or their solicitor, out of the proceeds of such sale, their costs in this suit to be taxed, and also the amount so reported due as aforesaid, together with legal interest thereon from the date of said report, or so much thereof as the purchase money of the said premises will pay of the same; and that the master take the receipt of the complainants or of their solicitor for the amount so paid, and file the same with his report of sale; and that he bring the surplus moneys arising from the said sale (if any there be) into court, without delay, to abide the further order of the court.

And it is further ordered, adjudged, and decreed, that the defendants in this suit, and all persons claiming or to claim from or under him subsequent to the commencement of this suit, and all other persons, although not parties to this suit, who have any liens, by judgment or decree, subsequent to the 30th day of January, 1830, or any liens or claims thereon, by or under any such subsequent judgment or decree, either as purchasers, incumbrances, or otherwise, be, and they are hereby declared to be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to the premises so sold, and every part and parcel thereof, and that the purchaser purchases of the premises so sold, or any part thereof, and any person who, since the commencement of this suit, has come into possession under them, or either of them, deliver possession thereof to such purchaser or purchasers on production of the master's deed for such premises, and a certified copy of the order confirming the report of the sale after such order has become absolute.

And it is further ordered, adjudged, and decreed, that if the moneys arising from the said sale are insufficient to pay the amount so reported due to the complainant, with interest and costs as aforesaid, that the said master specify the amount of such deficiency in his report of the sale, and that on the coming in and confirmation of the said report, the defendant, Peter McIntyre, who is personally liable for the pay-

ment of the debt secured by the said mortgage, pay to the complainants the amount of such deficiency, with interest thereon, from the date of such last mentioned report, and that the complainants have execution therefor. The description and particular boundaries of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained, from the mortgage above referred to, or from the bill of complaint in this cause, are as follows, viz:

All those lots of ground situate, lying, and being in the sixteenth ward of the said city of New York, known and distinguished on a certain map of the property of Thomas B. Clarke, of the said city of New York, gentleman, made by Amos Corning and Urial W. Freeman, city surveyors, by the numbers (119) one hundred and nineteen, one hundred and thirty, (130.) The said lot one hundred and nineteen being bounded as follows: On the west partly by the North river, and partly by the gore number one hundred and twenty-five; on the south by lot No. 118; on the east by the 10th avenue; and on the north by lot No. 120; being in breadth, in front and rear, twenty-four feet eight inches, and in length on each side one hundred feet. The said lot No. 130 is bounded as follows: West by the 10th avenue; north by lot No. 129; east by lot No. 189; and south by lot No. (131), one hundred and thirty-one, the same dimensions as above. And also all those lots of ground situate, lying, and being in the sixteenth ward of the said city of New York, known and distinguished on a certain map of the property of Thomas B. Clarke, of the said city, gentleman, made Amus Corning and Ural W. Freeman, city surveyors, by the numbers one hundred and seventeen (117) and one hundred and eighteen (118), also one hundred and thirty-one (131), one hundred and thirty-two (132), one hundred and thirty-three (133), one hundred and thirty-four 134), one hundred and thirty-five (135), one hundred and thirty-six (136), one hundred and thirty-seven (137), one hundred and thirty-eight (138), one hundred and thirty-nine (139), also one hundred and five (105), one hundred and six (106), one hundred and seven (107), one hundred and eight (108), one hundred and nine (109), also sixty-four (64), sixty-five (65), and sixty-six (66), and sixty-seven (67). Bounded as follows: Lots 117 and 118 are bounded westerly by the Hudson river; northerly by lot No. 19; easterly by Tenth avenue; and southerly by 25th street. Lots Nos. 131, 132, and 133, are bounded westerly on the Tenth avenue; northerly by lot No. 130; easterly by lot No. 134; and southerly by 25th street. Lots Nos. 134, 135, 136, 137, 138, 139, are bounded westerly by lots Nos. 130, 131, 132, and 133; northerly by lots Nos. 184, 185, 186, 187, 188, and 189; easterly by lot No. 140; and southerly by 25th street. Lots Nos. 105, 106, 107, 108, 109, are bounded northerly by 25th street; easterly by lot No. 110; southerly by lots Nos. 66, 67, 68, 69, and 70; and westerly by lot No. 104. Lots Nos. 64, 65, 66, and 67, are bounded southerly by 24th street; westerly by lot No. 168; northerly by lots Nos. 108, 109, 110, and 111; and easterly by No. 63.

All that lot of ground situate, lying, and being in the sixteenth ward, on the said city of New York, known and distinguished on a certain

map of the property of Thomas B. Clarke, of the said city, gentleman, made by Amos Corning and Ural W. Freeman, city surveyors, by the number (184) one hundred and eighty-four; bounded on the north by Twenty-sixth street; easterly by lot No. 183; southerly by lot No. (139) one hundred and thirty-nine; westerly by lot No. one hundred and eighty-five (185); containing in front twenty-five feet, and in depth ninety-nine feet four inches and a half an inch.

All those two certain pieces or parcels of ground situate, lying, and being on the Mount Vernon property, in the twelfth ward of the city of New York, and known and distinguished as lots Nos. (43) forty-three and forty-four (44), on a map of the said property made by Edward Doughty, city surveyor, September 5th, 1826, and on file in the office of register of the city and county of New York, and bounded as follows: Beginning at the northerly corner, on the southwesterly side of Sixtieth street, and southeasterly side of the First avenue; thence running southwesterly on the First avenue one hundred feet and five inches to the corner of lot No. (46) forty-six; thence southeasterly, at right angles, on the line of lots number forty-six and forty-seven to the corner of lots number forty-five and forty-seven, two hundred feet; thence northeasterly, on the line of lot number forty-five, one hundred feet five inches to Sixtieth street; thence on Sixtieth street two hundred feet to the place of beginning, be the same more or less, being the same lots as conveyed by Philip Brasher and Cornelia, his wife, to the said Peter McIntyre, by two several deeds dated the first day of November, in the year of our Lord one thousand eight hundred and twenty-six, duly recorded, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

Copy. JAMES CONNER, *Clerk.*

At a court of chancery held for the State of New York, at the city of New York, on the fifteenth day of July, 1844,

Present: William T. McCown, vice chancellor of the first circuit.

MARIA HUMPHREY, administratrix, and RICHARD M. CLARKE, administrator, &c., of ELIJAH HUMPHREY, deceased,
vs.
PETER MCINTYRE.

Order compelling purchaser to take.

On reading and filing notice of motion and proof of service thereof, and a report of sale and certificate made by Philo T. Ruggles, esq're, one of the masters of this court, bearing date on the 24th day of May, 1844, and affidavits, and a motion of Charles C. King, solicitor for the complainants, and after hearing Mr. King and Mr. Anthon for the motion in behalf of the complainants, and Mr. Ellingwood, in opposition and in behalf of the defendant, and of Mr. Edward H. Sheppard, the purchaser at the sale:

It is ordered that the said Edward H. Sheppard be discharged from his bid for and from the purchase of the lot known on the first map referred to in the decree of sale in this cause, and mentioned in the said report and certificate as lot No. 119 (one hundred and nineteen.)

And it is further ordered, that the said Edward H. Sheppard complete his purchase of the several lots forming parts of the mortgaged premises mentioned and described; that the said decree of sale, and which on the said map are designated by the numbers following, to wit: Nos. 117 (one hundred and seventeen), 118 (one hundred and eighteen), 131 (one hundred and thirty-one), 132 (one hundred and thirty-two), 134 (one hundred and thirty-four), 135 (one hundred and thirty-five), 136 (one hundred and thirty-six), 138 (one hundred and thirty-eight), 64 (sixty-four), 66 (sixty-six.)

And that he pay over into the hand of the said master the balance of the amounts bid by him, the said Shepherd, for the said lots respectively, with the interest upon the said amounts so bid by him from the times when the same became payable, according to the terms of said sale, and that such purchase be completed, and the said balance be paid to the said master on or before the fifteenth day of August next, or that, in default thereof, the said master re-advertise and re-sell the said lots, Nos. 117, 118, 131, 132, 134, 135, 136, 138, 64, and 66, under the said decree of sale heretofore made in this cause, which we mentioned in his said report and certificate.

And it is further ordered, that unless the said Sheppard shall, prior to such sale, pay to the said master the full amount of the balance due on the former purchase by him, such re-sale be made at the cost, expense, and risk of the said Edward H. Sheppard, and that in case the said lots, Nos. 117, 118, 131, 132, 134, 135, 136, 138, 64, and 66, shall be re-sold in pursuance of this order, and on such re-sale shall not produce the amount at which the same were bid off by the said Sheppard at the said former sale, with the interest justly due, and payable thereon, after deducting therefrom and retaining the amounts heretofore paid to the said master on account of the former purchases, that the said Edward H. Sheppard pay to the said master the amount of such deficiency or the difference between the same at which the said lots, Nos. 117, 118, 131, 132, 134, 135, 136, 138, 64, and 66, shall sell for less than the sum at which the same were bid off for by the said Sheppard at the said former sale, with the interest that may have accrued thereon, and the costs of the said re-sale after deducting and applying as aforesaid the amount heretofore paid to the said master, and mentioned in the said report and certificate.

And it is further ordered, that the said master also advertise and sell under the said decree and order, the said lot No. 130 on the Tenth avenue, and the said two lots situate at Mount Vernon, in the 12th ward, known as lots Nos. 43 (forty-three) and 44 (forty-four), on the map of the property which is also mentioned in the said decree of sale, or so much thereof as may be necessary to pay the balance of the amount due the complainants, with interest, and the costs and charges

in this suit, and the said lots Nos. 130, 43, 44, may be sold in such order, either before or after the re-sale of the said lots Nos. 117, 118, 131, 132, 134, 135, 136, 138, 64, and 66, as shall be deemed most for the interest of the parties, and as the said master shall deem necessary, in order to pay and satisfy the said complainant for the amount due them for principal and interest, and the costs of this suit, including the costs of this motion, and of such re-sale, to be charged as costs in the cause.

A copy.

HIRAM WALWORTH, *Clerk.*

The affidavits and prayer in which the order above was made, may be referred to by either party.

[Deed from Ruggles to Suydam.]

This indenture made the nineteenth day of February, in the year one thousand eight hundred and forty-five, between Philo T. Ruggles, one of the masters in chancery in and for the State of New York, dwelling in the city of New York, party of the first part, and James H. Suydam, of the same place, stonecutter, of the second part. Whereas at a court of chancery held at the city of New York, before the vice chancellor of the first circuit of the State of New York, on the twenty-fourth day of December, one thousand eight hundred and forty, it was among other things ordered, adjudged, and decreed by the said court, in a certain cause then pending in the said court between Maria Humphreys, administratrix, and Richard M. Clark, administrator, &c., of Elijah Humphreys, deceased, complainants, and Peter McIntyre, defendant, that all and singular the mortgaged premises mentioned in the bill of complaint in said cause, and in said decree described, or so much thereof as might be sufficient to raise the amount due to the complainant for principal and interest and costs in said cause, and which might be sold separately without material injury to the parties interested, be sold at public auction according to the course and practice of this court, by or under the direction of one of the masters thereof residing in the city of New York; that the said sale be made in the county where the said mortgaged premises, or the greater part thereof, are situated; that the master give public notice of the time and place of such sale, according to the course and practice of said court, and that any of the parties in said cause might become a purchaser or purchasers on such sale; that the said master execute to the purchaser or purchasers of the said mortgaged premises, or such part or parts thereof as should be so sold, a good and sufficient deed or deeds of conveyance for the same: And whereas a certificate of the enrolment of said decree, signed by the clerk of said court, has been presented to the said party of the first part: And whereas the said master in chancery, in pursuance of the order and decree of the said court, did, on the twenty-ninth day of April, and first day of May, 1844, sell at public auction, at the Merchants' Exchange, in the city of New York,

part of the premises in the said order mentioned, due notice of the time and place of such sale being first given, agreeably to the said order, at which sale the premises hereinafter described were struck off to the said party of the second part, for the sum of five thousand five hundred dollars, that being the highest sum bidden for the same: Now, this indenture witnesseth, that the said master in chancery, the party of the first part to these presents, in order to carry into effect the sale so made by him as aforesaid, in pursuance of the order and decree of the said court, and in conformity to the statute in such case made and provided, and also in consideration of the premises and of the said sum of money so bidden as aforesaid being first duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained, sold, and by these presents doth grant and convey unto the said party of the second part, his heirs and assigns, all those two certain lots, pieces or parcels of land, being part of the said mortgaged premises, situate, lying and being in the sixteenth ward of the city of New York, on the northerly side of Twenty-fourth street, in the city of New York, and known and distinguished on a certain map of the property of Thomas B. Clarke, of the said city, gentleman, made by Amos Corning, Ursol W. Freeman, city surveyors, by the numbers sixty-four (64) and sixty-five (65,) bounded and containing as follows: Southerly in front by Twenty-fourth street, westerly by lot number sixty-six (66) on said map, northerly by lots Nos. 110 and 111 in said map, and easterly by lot number 63 on said map:

And also all those two certain other lots, pieces or parcels of land, being part of the said mortgaged premises, situate, lying and being in the said sixteenth ward of the city of New York, on the westerly side of the Tenth avenue, and known and distinguished on the map aforesaid by the numbers one hundred and seventeen (117) and one hundred and eighteen (118); the said lot number 118 being bounded westerly by the Hudson river, northerly by lot No. 119 on said map, easterly by the Tenth avenue, and southerly by lot No. 117 on said map. The said lot No. 117 being bounded westerly by the Hudson river, on the south by Twenty-fifth street, on the east by the Tenth avenue, and on the north by lot number 118 on said map:

To have and to hold all and singular the premises above mentioned and described, and hereby conveyed, or intended so to be, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever.

In witness whereof, the said Philo T. Ruggles, master in chancery as aforesaid, hath hereunto set his hand and seal, the day and year first above written.

PHILO T. RUGGLES, [L. S.]
Master in Chancery.

Sealed and delivered in the presence of (three lines on second page erased before execution)
HY. P. MANNAHER.

STATE OF NEW YORK, *ss.*

On the twentieth day of February, one thousand eight hundred and forty-five, before me, came Philo T. Ruggles, known to me to be the individual described, and who executed the above conveyance, and acknowledged that he executed the same.

HY. P. MANNAHER,
Com. of Deeds.

The plaintiffs' counsel then offered to prove—

1st. That the acts of the legislature were not for the benefit of the infants, but for the benefit of Thomas B. Clarke merely.

2d. That the orders of the chancellor had the effect to take the proceeds of their future interest in the property sold, and to apply the same to the father's debts, without giving them any benefit, by support or otherwise, out of the interest of the life estate in other parts of the property.

3d. That under the acts and orders he actually aliened the lot on Broadway and all the southern moiety of the Greenwich property, excepting two lots, and that none of the children received any benefit from such alienation.

4th. That nearly the whole of the property mentioned in the acts of legislature was mortgaged or conveyed by Thomas B. Clarke for old debts; that no proceeds were ever invested or secured, or ever received, from the grantors or mortgagees.

5th. That so far from providing for the children or protecting the estate, he suffered a large portion of the northern moiety to be sold for assessments, and was proceeding to dispose of the same moiety for twenty-one years, when, on the thirty-first of March, 1826, a bill was filed against him on behalf of the children, and an injunction issued.

6th. That on the death of his wife he broke up housekeeping, and ceased to live with his children; that the plaintiff was Mrs. Williamson; was, from the death of her mother in August, 1815, supported and educated entirely by one of her aunts; and that, after about two years from the mother's death, the other children were supported and educated by their friends, and were entirely neglected by their father.

The defendant's counsel objected; the objection was sustained. The plaintiffs' counsel excepted.

A verdict was then, by direction of the court, taken for the plaintiffs for the premises claimed, subject to the opinion of the court upon the questions of law, with liberty to either party to turn this case into a special verdict or bill of exceptions.

SAM'L R. BETTS. [L. S.]

Endorsed: 127, circuit court south. dist. N. Y.—Willimina H. Williamson and others agt. James H. Suydam.—Cr. case.—Jas. L. Sluyter, pl'ffs' atty.

Filed this 29 January, 1855.

[REC. LXIX, D. T., 1857.]—4

Will of Mary Clarke.

In the name of God, amen. I, Mary Clarke, of the city of New York, widow and relict of Thomas Clarke late of the same place, gentleman, at present of sound and disposing mind and memory for which I bless God, do make, publish, and declare this my last will and testament in manner following; that is to say, I will that all such debts as I shall justly owe at the time of my decease, and my funeral charges and expenses be first paid by my executors hereinafter named. And as to my estate real and personal, I dispose thereof as follows—first, I give and devise unto the Reverend Benjamin Moore and Charity his wife and to their heirs in fee, all that certain dwelling house and that part of the farm whereon I now live at Greenwich called Chelsea, and all the buildings and improvements thereon erected, bounded southerly by the land of said Benjamin Moore, easterly by the highway called Greenwich road and northerly by a line to be drawn commencing at a point in the said road twelve feet to the north of the intersection of the fence which now stands behind the house occupied by John Platt and to run as nearly parallel to the said fence as a straight line down to Hudson's river will permit, so as to strike a cedar just planted in the ground not far from high-water-mark, and westerly by the Hudson aforesaid. To have and to hold the said hereby described premises with the appurtenances, to the said Benjamin Moore and Charity his wife and to their heirs in fee. Also I give and devise unto the said Benjamin Moore and Charity his wife, the one equal undivided half part of my salt meadow situate at a place called Harga on Jersey shore in the county of Bergen, to hold the same to them and their heirs in fee. I give and bequeath unto the said Benjamin Moore all my farming utensils of every description and all my carriages both for pleasure and for service, my horses and cattle of every description. And also all my slaves to wit, Thomas and Ann his wife, Charles and Hester. I give and bequeath to my daughter Charity all my furniture and wearing apparel. Item, I give and devise unto my grandson Clement C. Moore, son of the Rev. Benjamin Moore twelve hundred acres of land situate in the patent of Kayaderosseras with the appurtenances, the same now being divided into good farms and under lease to different tenants, on the counterparts of whose leases I have written his name as designating particularly that part of the said patent included in this devise; to have and to hold the said twelve hundred acres and premises with the appurtenances to the said Clement C. Moore and to his heirs in fee. Item, I give and devise to the said Clement C. Moore, one other lot, a farm situate in the said patent and distinguished by lot number nine in the thirtieth allotment of the said patent containing one hundred and six acres, to hold the same to the said Clement C. Moore and to his heirs in fee. Item, I give and devise unto the said Clement C. Moore and Thomas B. Clarke, a natural son of my son Clement and to their heirs, all those four certain lots of land situate in the said patent, containing, in the whole, two thousand seven hundred and seventy-seven acres, of which there is contained in the eighteenth al-

lotment of the said patent, five hundred acres, in the thirtieth allotment five hundred and thirty-seven acres and a half, and in the twenty-fourth allotment one thousand two hundred and thirty-four acres, and in the twenty-fifth allotment five hundred and five acres and a half; to hold the same to them the said Clement C. Moore and Thomas B. Clarke and to their heirs in fee. Item, I give and devise unto the said Benjamin Moore and Charity his wife and to Elizabeth Maunsell and their heirs forever as joint tenants and not as tenants in common, all that certain lot of land number eight in the said thirteenth allotment of the said patent, containing one hundred acres: also all that part of my said farm at Greenwich aforesaid, called Chelsea, lying to the northward of the line hereinbefore directed to be drawn from the Greenwich road to the Hudson river twelve feet to the northward of the fence standing behind the house now occupied by John Hall, bounded southerly by the said line, northerly by the land of Cornelius Ray, easterly by the Greenwich road, and westerly by the Hudson including that part of my said farm now under lease to Robert Lenox; also all my house and lot with the appurtenances known by number seven within the limits of the prison and now occupied by Thomas Byron; to have and to hold the said hereby devised premises to the said Benjamin Moore and Charity his wife and Elizabeth Maunsell, and to the survivor or survivors of them and the heirs of such survivor as joint tenants and not as tenants in common, in trust to receive the rents, issues and profits thereof, and to pay the same to the said Thomas B. Clarke, natural son of my late son Clement, during his natural life and from and after the death of the said Thomas B. Clarke, in further trust to convey the same to the lawful issue of the said Thomas B. Clarke living at his death in fee, and if the said Thomas B. Clarke shall not leave any lawful issue at the time of his death then in the further trust and confidence to convey the said hereby devised premises to my said grandson Clement C. Moore, and to his heirs or to such person in fee as he may by will appoint in case of his death prior to the death of the said Thomas B. Clarke. Item, I give and demise unto the said Benjamin Moore and Charity his wife, and Elizabeth Maunsell and to their heirs forever as joint tenants and not as tenants in common, six hundred acres of land with the appurtenances situate in the said patent of Kayaderosseras and divided into farms now under lease to different tenants, on the counterpart of whose leases I have marked the name of Clement Clarke so as to designate the lots hereby devised; also all that lot on the opposite side of Greenwich road now in the possession of Mr. Turner; also the wood lot adjoining the same, the said two lots containing about thirty acres in the whole; to hold the said hereby devised premises to them the said Benjamin Moore and Charity his wife, and Elizabeth Maunsell and to the survivors or survivor of them and the heirs of such survivor as joint tenants and not as tenants in common, in trust to receive the rents, issues and profits thereof and to pay the same to Clement Clarke, a natural son of my late son Clement during his natural life, and from and after the death of the said Clement in fur-

ther trust and confidence to convey the same to the lawful issue of the said Clement living at his death, and in case the said Clement should die without leaving lawful issue, then on the further trust and confidence to convey the same to my grandson Clement, son of the said Benjamin Moore and to his heirs in fee or to such person as he may by will appoint in case of the death of the said Clement Moore prior to that of the said Clement Clarke. Item, I give and devise unto the said Benjamin Moore and Charity his wife and Elizabeth Maunsell and to their heirs forever as joint tenants and not as tenants in common, all that house and lot of ground situate in Hague street in the city of New York; also all that lot of land situate in the patent of Kayaderosseras and lying on the Mohawk river in the possession of one Northrup; also the lot of land situate in the said patent in the possession of Hacaleah Foster; also seven hundred and fifty-one acres of land lying in the twenty-third allotment of the patent aforesaid; also six hundred acres divided into farms now leased to different tenants on the counterparts of whose leases I have endorsed the name of Samuel Clarke so as to designate the farms included in this devise of six hundred acres: to hold the same to the said Benjamin Moore and Charity his wife, and Elizabeth Maunsell and to the survivors or survivor of them and to the heirs of such survivor as joint tenants and not as tenants in common, in trust to receive the rents, issues and profits thereof and to pay the same to Samuel Clarke a natural son of my late son Clement during his natural life, and from and after his death in the further trust and confidence to convey the same in fee to such lawful issue of the said Samuel as he may leave at the time of his death, and if the said Samuel shall die without leaving lawful issue living at the time of his death, then in the further trust to convey the same in fee to the said Clement Moore, son of the said Benjamin Moore and to his heirs in fee or to such person as he may by will appoint in case of his death prior to that of the said Samuel Clarke. Item, I give and bequeath unto Charity Clarke, natural daughter of my late son Clement fifty-five pounds to be paid quarterly and continued annually until she marries; the rent proceeding from the lots leased to Mr. Turner and John Platt to be applied to this purpose. Also I give and bequeath unto her five hundred pounds to be paid at her marriage or arrival at full age whichever event may first happen. It is also my will that she be maintained frugally out of the moneys now at interest, and that a fund be kept for that purpose by my executors until her marriage or arrival at full age as aforesaid. Item, I give and bequeath unto Mary, natural child of my late son Clement, the annual sum of fifty pounds and a frugal maintenance out of the moneys now at interest and that a fund be kept by my executors for that purpose until her marriage. Also I give to her the sum of five hundred pounds to be paid at her marriage or arrival at full age whichever event may first happen. Item, I give and bequeath unto the said Thomas B. Clarke one thousand pounds to be paid to him within three months after my decease. Item, I give and bequeath unto my daughter Mary, wife of Sir Gilbert Affleck, one thousand and five hundred

pounds sterling to be paid in one year after my decease. It is my further will that Richard, my slave, be manumitted by my executors on his arrival at full age and that in the meantime he be put out to learn some trade and be supported out of my estate during such his service. I do further direct that Rachel, my slave, be sold immediately after my decease by my executors and all the rest, residue and remainder of my estate, real and personal of what nature soever and wheresoever not before herein disposed of, I give, devise, and bequeath unto the said Clement Moore and to the said five children of my son Clement and to their heirs, executors, and administrators forever as tenants in common, equally to be divided between them, share and share alike, at such times as my executors may think discreet. And lastly I do hereby nominate, constitute and appoint my son-in-law the Reverend Benjamin Moore and Charity his wife. their son, the said Clement C. Moore, Elizabeth Maunsell, and the said Thomas B. Clarke, executors and executrixes of this my last will and testament hereby revoking all former and other wills by me made. In witness whereof, I, Mary Clarke, the testatrix, have to this my last will and testament, consisting of two sheets of paper, set my hand and seal this sixth day of April, in the year of our Lord one thousand eight hundred and two. Mary Clarke, (L. S.) Signed, sealed, published and declared by the said Mary Clarke within named, as and for her last will and testament, in the presence of us, who, in her presence, and at her request have hereunto set our names as witnesses.—the name "Moore," between the eighteenth and nineteenth lines fourth page and the words "be paid," between the twelfth and thirteen lines seventh page being interlined. Thomas Salter, J. B. Provost, Peter Dayton.

Petition of T. B. Clark to the Legislature.—March 2, 1814.

To the Honorable the Legislature of the State of New York, in Senate and Assembly convened. The petition of Thomas B. Clarke, of the city of New York, humbly showeth,

That Mary Clarke, late of the city of New York, deceased, widow and relict of Thomas Clarke, late of the same place, gentleman, deceased, in and by her last will and testament, bearing date the sixth day of April, in the year of our Lord one thousand eight hundred and two, did among other things devise unto Benjamin Moore, and Charity his wife, and to Elizabeth Maunsell, and to their heirs forever as joint tenants and not as tenants in common, certain real estate described in the said will in trust, nevertheless to receive the rents, issues, and profits thereof, and to pay the same to your petitioner, the grandson of the said testatrix, during his natural life, and from and after the death of your petitioner, in further trust to convey the same to the lawful issue of your petitioner, living at his death in fee, and if your petitioner should not have any lawful issue at the time of his death, then in the further trust and confidence to convey the said devised premises to Clement C. Moore, also the grandson of the said testatrix, and to his heirs or to such person in fee as he might by will appoint in case of his death, prior to that of your petitioner.

And your petitioner further showeth unto the honorable the legislature, that the said Benjamin Moore, and Charity his wife, and the said Elizabeth Maunsell, the said trustees herein before named, have, in and by a certain instrument in writing under their hands and seals, bearing date the eleventh day of January last, consented, and agreed to all such acts as the legislature of this State might deem proper to pass for the benefit, and relief of your petitioner, or of his issue, his and assigns in and concerning the premises, and did thereby likewise request, that some other person, or persons might be substituted for them, in their place and stead, as trustees aforesaid, and that they might be discharged from their said trust.

And your petitioner further showeth unto the honorable the legislature, that Clement C. Moore, the devisee in remainder, upon the contingency happening in the said will, hath by a certain instrument in writing under his hand and seal, bearing date the said eleventh day of January last, consented also to all such acts as the legislature might deem proper for the benefit, and relief of your petitioner, or of his issue, heirs, and assigns, in, and concerning the premises; the title, claim, and interest of the said Clement C. Moore, in and to the said lands, tenements, hereditaments, and real estate, in any wise notwithstanding.

And your petitioner further showeth to your honorable body, that by reason of many circumstances, the situation of the estate divised, and the phraseology of the said will, the said estate cannot be so improved, and made productive as to answer the benevolent purposes of the testatrix. And your petitioner further showeth, that he hath married and hath issue, to wit, five children, and that he, and his family cannot derive the benefit contemplated by the said will without legislative aid in the premises. That such aid is absolutely necessary for the support of your petitioner and his family.

Wherefore your petitioner humbly prays your honorable body for leave to introduce a bill into the legislature, making provision in the premises, and that the said bill may be passed into a law. And your petitioner will ever pray, &c.

T. B. CLARKE.

Endorsed: Thomas B. Clarke's petition. In assembly, March 2d, 1814. Read and ref'd to Messrs. D. B. Ogden, Furman, Kissam.

STATE OF NEW YORK,
Secretary's Office.

I have compared the preceding with an original petition on file in this office, and do certify, that the same is a correct transcript therefrom, and of the whole of said original. And I further certify, that I have made diligent search among the records and papers in this office, and that I do not find any paper or document relating to any application of Thomas B. Clarke, except the petition of which the above is a transcript, and a deed from Clement C. Moore, to Thomas B. Clarke, bearing

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date the 21st day of February, 1815, recorded in book of deeds, No. 39, page 140, &c. Nor do I find any evidence in this office, that any testimony was taken or read before the legislature, or any committee thereof, in relation to the application of said Thomas B. Clarke.

In testimony whereof, I have hereunto affixed the seal of this office, at the city of Albany, the fifth day of December, in the year of our Lord one thousand eight hundred and forty-four.

[L. S.]

ARCH'D CAMPBELL,
Dep. Sec. of State.

Extract from Assembly Journal.

March 7, 1814. Mr. D. B. Ogden, from the select committee, to whom was referred the petition of Thomas B. Clarke, reported: That the facts stated in the petition are true, and that in the opinion of the committee, the prayer thereof ought be granted; they have prepared a bill for that purpose, and directed their chairman to ask for leave to bring in the same.

Ordered, that leave be given to bring in such bill.

Mr. Ogden, according to leave, brought in the said bill, entitled "An act for the relief of Thomas B. Clarke," which was read the first time, and by unanimous consent was also read a second time, and committed to a committee of the whole house.

Act of April 1, 1814.

Whereas Mary Clarke, late of the city of New York, deceased, widow, and relict of Thomas Clarke, late of the same place, gentleman, deceased, in and by her last will and testament, bearing date the sixth day of April, in the year of our Lord one thousand eight hundred and two, did, among other things, devise unto Benjamin Moore and Charity, his wife, and to Elizabeth Maunsell, and to their heirs forever, certain lands and real estate; to have and to hold to the said Benjamin Moore, and Charity his wife, and to the said Elizabeth Maunsell, and to the survivors or survivor of them, and to the heirs of such survivor as joint tenants, and not as tenants in common, in trust, to receive the rents, issues, and profits thereof, and to pay the same to Thomas B. Clarke, one of the devisees of the testatrix during his natural life; and from and after the death of the said Thomas B. Clarke, in further trust, to convey the same to the lawful issue of the said Thomas B. Clarke, living at his death, in fee; and if the said Thomas B. Clarke should not have any lawful issue at the time of his death, then in the further trust and confidence, to convey the said devised premises to Clement C. Moore, also one of the devisees of the said testatrix, and to his heirs, or to such person in fee, as he might, by will, appoint in case of his death, prior to that of the said Thomas B. Clarke. And whereas it appears to the legislature, that the property so devised as aforesaid is nearly unproductive, and, in its present situation, is incapable of being improved, so as to yield an adequate income for the maintenance and

support of the said Thomas B. Clarke and is family, whereby the benevolent intentions of the testatrix will be defeated, without the interposition and aid of the legislature. And whereas the said Benjamin Moore and Charity, his wife, and the said Elizabeth Maunsell, the said trustees named in the said will, in and by a certain instrument under their hands and seals, bearing date and duly executed by them, on the eleventh day of January last, did consent and agree to all such acts as the legislature of this State should deem meet and proper to make for the benefit and relief of the said Thomas B. Clarke, or of his issue, heirs and assigns, in and concerning the premises; and also did by the said instrument in writing, consent and desire that some other person or persons might be substituted for them in their place and stead, as trustees aforesaid, and they be discharged from the said trust. And whereas Clement C. Moore, the person named in the said will, and entitled to the contingent remainder, hath, by a certain other instrument in writing, under his hand and seal, bearing date and duly executed by him, on the said eleventh day of January last, consented and agreed to all such act or acts as the legislature might deem proper to make for the benefit and relief of the said Thomas B. Clarke: therefore

I. Be it enacted by the people of the State of New York, represented in senate and assembly, That it shall and may be lawful for the court of chancery, on the application of the said Thomas B. Clarke, to constitute and appoint one or more trustees to execute and perform the several trusts and duties specified and set forth in the said in part recited will and testament and in this act, in the place and stead of the said Benjamin Moore, and Charity, his wife, and the said Elizabeth Maunsell, who are hereby discharged from the trusts in the said will mentioned. Provided, that it shall be lawful for the said court at any time thereafter, as occasion may require, to substitute and appoint other trustee or trustees in the room of any of those appointed in this act, in like manner as is practised in the said court in cases of trustees appointed therein; and such trustee or trustees so appointed are hereby vested with the like powers as if he or they had been named and appointed in and by this act.

II. And be it further enacted, That the trustees appointed, or to be appointed by or under the authority of this act, or the major part of them, shall, as soon as conveniently may be, partition and divide all that certain tract of land described in the said last will and testament, as follows, viz: "All that part of my said farm at Greenwyck aforesaid, called Chelsea, lying to the northward of the line hereinbefore directed to be drawn from the Greenwyck road to the Hudson's river, twelve feet to the northward of the fence standing behind the house now occupied by John Platt, bounded southerly by the said line, northerly by the land of Cornelius Ray, easterly by the Geenwyck road, and westerly by the Hudson, including that part of my said farm now under lease to Robert Lenox," into two equal parts, one moiety whereof shall be held by them to the uses and upon the trusts declared in

and by the said will, and the remaining moiety shall be subdivided by the said trustees, or the major part of them, into so many lots as they, or the major part of them, may think most likely to effect an advantageous sale thereof; and after having completed such subdivision, the said trustees, or a major part of them, are hereby authorized and required, within a convenient time thereafter, not to exceed six months, except at the request of the said Thomas B. Clarke, to sell and dispose of the said last-mentioned subdivided moiety; and also that certain house and lot described in the said last will and testament as follows, viz: "All my house and lot, with the appurtenances, known by number seven, within the limits of the prison, and now occupied by Thomas Byron," in such manner and upon such terms as they, or a major part of them, may deem best for the interest of the several parties interested therein, and thereupon to make and execute good and sufficient deeds or conveyances in the law to the purchaser or purchasers thereof, which deeds or conveyances shall operate to convey to the said purchaser or purchasers respectively, all the estate, right and title and interest which the said Mary Clarke had at the time of her death in and to the said premises.

III. And be it further enacted, That the said trustees, or a major part of them, within a convenient time after the said sale, for the purpose of securing the principal of the proceeds thereof, to the uses to and according to the trust declared in and by the said will, and for the further purpose of creating an income for the benefit and support of the said Thomas B. Clarke, his family and children, shall invest the said proceeds in any public stock of the United States or of this State, or bank stock, or shall put the same out at interest on real security from time to time, as they, or a majority of them, shall deem most for the interest of the parties concerned therein; and the said trustees, or a majority of them, shall, out of the interest or income of the said proceeds, in the first place, set apart and reserve for the first four years eight hundred dollars a year, and from and after the expiration of the said four years one thousand dollars a year, during the natural life of the said Thomas B. Clarke, which said annual reservations, together with the interest thereof, from time to time accruing, are to be invested in stock, or put out on real security by the said trustees, or a majority of them, for the purpose of creating an accumulating fund, at a compound interest, during the life of the said Thomas B. Clarke, for the benefit of his children after his decease, when the same is to be disposed of by the said trustees, or a majority of them, to the uses according to the trusts declared in and by the said last will and testament, and the residue of the said income that may remain from year to year, after making the reservations aforesaid, shall be paid by the said trustees, or a major part of them, to the said Thomas B. Clarke, for his use and benefit, and for the maintenance of his family, and education and support of his children.

IV. And be it further enacted, That the said principal sum of money arising from the said sales, and by this act directed to be vested or put out at interest aforesaid, shall be held by the said trustees, or the major

part of them, according to the said will; that is to say, in trust to be assigned or paid over to the lawful issue of the said Thomas B. Clarke, living at his death; and if the said Thomas B. Clarke shall not leave any lawful issue at the time of his death, then to be assigned or paid over to Clement C. Moore, or his representatives, or to such person as the said Clement C. Moore may, by will, appoint in case of his death prior to that of the said Thomas B. Clarke.

V. And be it further enacted, That it shall and may be lawful for the said trustees, or a major part of them, during the natural life of the said Thomas B. Clarke, from time to time, to demise and let for the best rents that can be procured, and to such person or persons, with such covenants, and upon such terms, limitations, and conditions as the said trustees, or the major part of them, shall think expedient, all or any part or parcel of the land first above mentioned in the second section of this act, for and during any term of years not exceeding twenty-one, and to renew such leases or demises, to take effect from the date and execution thereof, and not in future or remainder, if such trustees, or the major part of them, shall judge proper, and to collect and receive the rents and profits thereof, and to pay the same over to the said Thomas B. Clarke, as they shall be received for and during his natural life. Provided, that no lease shall be made, executed, or renewed under this section, but by the approbation and consent of the said Thomas B. Clarke. And provided further, that upon the death of the said Thomas B. Clarke, the unexpired term or terms of any such leases shall be held by the trustees, or a major part of them, in trust, for the uses and purposes mentioned in the said before in part recited will, and none other, and to be deemed part and parcel of the estate thereby devised, according to the true intent and meaning of the said will.

VI. And be it further enacted, That in every case, not otherwise provided for by this act, the trustees appointed or to be appointed in virtue thereof, shall be deemed and adjudged trustees under the said will, so far as relates to the premises mentioned and described in the recital to this act, in like manner as if such trustees had been originally named and appointed in the said will, and they shall, in all respects, be liable to the power and authority of the court of chancery for or concerning the trusts created by this act.

Petition of T. B. Clarke—May 1, 1815.

To the Honorable the Legislature of the State of New York, represented in Senate and Assembly. The petition of Thomas B. Clarke, of the city of New York, respectfully showeth:

That since the passing of the act, entitled "An act for the relief of Thomas B. Clarke," passed April 1st, 1814, Clement C. Moore, in the said act named, and who under the will of Mary Clarke had a contingent interest in the estate thereby devised to the trustees for the benefit of your petitioner and his family, has released all his interest in the said property, to your petitioner, his heirs and assigns, by deed, bearing date the 21st February, 1815, whereby your petitioner and his infant children are the only persons interested in the said estate.

That your petitioner has made every effort to procure a fit and proper person to execute the trusts created in and by the said act, but from the extent and nature of the duties required to be performed, he has not been able to prevail upon any suitable person to undertake the performance thereof.

Your petitioner, therefore, humbly prays for leave to present a bill supplemental to the said act and to amend the same, and that the same may be enacted into a law. And he will ever pray, &c.

T. B. CLARKE.

SENATE CHAMBER, CLERK'S OFFICE,
ALBANY, *December* 4, 1844.

I hereby certify, that the foregoing is a true copy of a petition on file, among the legislative papers belonging to the Senate of the State of New York, remaining in this office, said petition presented March 1st, 1815. I further certify, that I have made diligent search among the legislative papers belonging to the said Senate for the years 1814, 1815, and 1816, and I cannot find among said papers any other petition or paper relating to any application, or petition of Thomas B. Clarke, nor do I find any evidence among said papers, or remaining in this office, that any testimony was taken, or produced before the said Senate touching any application or petition of Thomas B. Clarke, except what appears in certain statutes relating theteto, printed in the session laws of this State.

ISAAC R. ELWOOD,
Clerk of the Senate of the State of New York.

Indenture.

This indenture made the twenty-first day of February, in the year of our Lord one thousand eight hundred and fifteen, between Clement C. Moore, of the city and county of New York, gentleman, of the first part, and Thomas B. Clarke of the same place, gentleman, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of one dollar, to him in hand paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, remised, released, and forever quit-claimed, and by these presents doth grant, bargain, sell, remise, release, and forever quit-claim unto the said party of the second part, his heirs and assigns forever, all the estate, right, title, interest, property, claim and demand whatsoever of him, the said party of the first part, of, in, and to all those certain tracts, pieces or parcels of land, described in the last will and testament of Mary Clarke, late of the city of New York, widow, deceased, as follows, viz: "All that part of my said farm at Greenwyck aforesaid called Chelsea, lying to the northward of the line herein before directed to be drawn from the Greenwyck road to the Hudson's river, twelve feet to the northward of the fence standing behind the house now occupied by John Platt, bounded southerly by the said line,

northerly by the land of Cornelius Ray, easterly by the Greenwyck road, and westerly by the Hudson, including that part of my said farm now under lease to Robert Lenox; and also all my house and lot with the appurtenances known by number seven, within the limits of the prison, and now occupied by Thomas Byron;" as by the said last will and testament bearing date the sixth day of April, one thousand eight hundred and two, or the record thereof in the office of the clerk of the Supreme Court, will more fully appear, together with all and singular the appurtenances: to have and to hold the said premises with the appurtenances unto the said party of the second part, his heirs and assigns, to the only proper use of the said party of the second part, his heirs and assigns forever.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

[L. S.]

CLEMENT C. MOORE.

Sealed and delivered in the presence of Bev. Robinson.

CITY AND COUNTY OF NEW YORK, *ss:*

Personally appeared before me, James A. Hamilton, Master in Chancery in and for the State of New York, this twenty-second day of February, in the year one thousand eight hundred and fifteen, Beverly Robinson, to me personally known, who, being sworn, deposed that he saw Clement C. Moore (to him well known to be the person described in the within instrument) execute the same as his voluntary act and deed, and that the said deponent subscribed his name as a witness to the same. All which being satisfactory to me, I do allow it to be recorded.

JAMES A. HAMILTON,
Master in Chancery.

Recorded February 28th, 1815, at noon, and agrees with the original, compared therewith by

ARCHD. CAMPBELL,
Dep. Secretary.

STATE OF NEW YORK, *Secretary's Office.*

I have compared the preceding with a certain indenture recorded in this office, in Book of Deeds No. 39, page 140, &c., and do certify that the same is a correct transcript therefrom and of the whole of said indenture. (1 age 2, between lines 7 and 8, one line interlined.)

In testimony whereof I have hereunto affixed the seal of this office, at the city of Albany, the eighteenth day of November, in the year of our Lord one thousand eight hundred and forty-four.

[L. S.]

ARCHD. CAMPBELL,
Dep. Sec. of State.

Extract from Senate Journal.

March 1, 1815. Mr. Van Buren asked for leave to bring in a bill entitled "An act supplemental to the act for the relief of Thomas B. Clarke," passed April 1st, 1814.

Thereupon ordered that leave be given to bring in such bill.

Mr. Van Buren, according to leave, brought in the said bill, which was read the first time, and, by unanimous consent, was also read a second time, and committed to a Committee of the Whole.

Act of March 24, 1815.

AN ACT supplemental to the "Act for the relief of Thomas B. Clarke," passed April 1, 1814.

Whereas since the passing of the act entitled "An act for the relief of Thomas B. Clarke," Clement C. Moore in the said act named, by an indenture duly executed by him, and recorded in the office of the Secretary of this State, and bearing date the twenty-first day of February, in the year one thousand eight hundred and fifteen, hath, for the consideration therein expressed, and in due form of law, released and conveyed unto the said Thomas B. Clarke, his heirs and assigns forever, all the estate, right, title, interest, property, claim, and demand whatsoever, of the said Clement C. Moore, of, in, and to the real estate mentioned in the said act, whereby the said real estate became exclusively vested in the said Thomas B. Clarke and his children: And whereas the said Thomas B. Clarke hath prayed the legislature to alter and amend the said act, particularly in relation to the interest of the said Clement C. Moore, and the execution of certain of the trusts in the said act mentioned: therefore,

I. Be it enacted by the people of the State of New York, represented in senate and assembly, That all the beneficial interests and estate of the said Clement C. Moore, or those under him, arising or to arise by virtue of the act to which this is a supplement, or by the will mentioned in the said act, shall be and the same is hereby vested in the said Thomas B. Clarke, his heirs and assigns, and so much of the act to which this is a supplement as is repugnant hereto, and so much thereof as requires the trustees to set apart and reserve a certain annual stipend out of the interest or income of the property thereby directed to be sold for the purpose of creating an accumulating fund at compound interest, during the life of the said Thomas B. Clarke, and so much of the said act as requires the several duties therein enumerated to be performed by trustees to be appointed by the court of chancery, as therein mentioned, be, and the same is hereby repealed.

II. And be it further enacted, That the said Thomas B. Clarke be, and is hereby, authorized and empowered to execute and perform every act, matter and thing, in relation to the real estate mentioned in the act to which this is a supplement, in like manner and with like effect that trustees duly appointed under the said act might have done, and that the said Thomas B. Clarke apply the whole of the interest and income of the said property to the maintenance and support of his family, and the education of his children.

northerly by the land of Cornelius Ray, easterly by the Greenwyck road, and westerly by the Hudson, including that part of my said farm now under lease to Robert Lenox; and also all my house and lot with the appurtenances known by number seven, within the limits of the prison, and now occupied by Thomas Byron;" as by the said last will and testament bearing date the sixth day of April, one thousand eight hundred and two, or the record thereof in the office of the clerk of the Supreme Court, will more fully appear, together with all and singular the appurtenances: to have and to hold the said premises with the appurtenances unto the said party of the second part, his heirs and assigns, to the only proper use of the said party of the second part, his heirs and assigns forever.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

[L. S.]

CLEMENT C. MOORE.

Sealed and delivered in the presence of Bev. Robinson.

CITY AND COUNTY OF NEW YORK, *ss:*

Personally appeared before me, James A. Hamilton, Master in Chancery in and for the State of New York, this twenty-second day of February, in the year one thousand eight hundred and fifteen, Beverly Robinson, to me personally known, who, being sworn, deposed that he saw Clement C. Moore (to him well known to be the person described in the within instrument) execute the same as his voluntary act and deed, and that the said deponent subscribed his name as a witness to the same. All which being satisfactory to me, I do allow it to be recorded.

JAMES A. HAMILTON,
Master in Chancery.

Recorded February 28th, 1815, at noon, and agrees with the original, compared therewith by

ARCHD. CAMPBELL,
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STATE OF NEW YORK, *Secretary's Office.*

I have compared the preceding with a certain indenture recorded in this office, in Book of Deeds No. 39, page 140, &c., and do certify that the same is a correct transcript therefrom and of the whole of said indenture. (1 age 2, between lines 7 and 8, one line interlined.)

In testimony whereof I have hereunto affixed the seal of this office, at the city of Albany, the eighteenth day of November, in the year of our Lord one thousand eight hundred and forty-four.

[L. S.]

ARCHD. CAMPBELL,
Dep. Sec. of State.

Extract from Senate Journal.

March 1, 1815. Mr. Van Buren asked for leave to bring in a bill entitled "An act supplemental to the act for the relief of Thomas B. Clarke," passed April 1st, 1814.

Thereupon ordered that leave be given to bring in such bill.

Mr. Van Buren, according to leave, brought in the said bill, which was read the first time, and, by unanimous consent, was also read a second time, and committed to a Committee of the Whole.

Act of March 24, 1815.

AN ACT supplemental to the "Act for the relief of Thomas B. Clarke," passed April 1, 1814.

Whereas since the passing of the act entitled "An act for the relief of Thomas B. Clarke," Clement C. Moore in the said act named, by an indenture duly executed by him, and recorded in the office of the Secretary of this State, and bearing date the twenty-first day of February, in the year one thousand eight hundred and fifteen, hath, for the consideration therein expressed, and in due form of law, released and conveyed unto the said Thomas B. Clarke, his heirs and assigns forever, all the estate, right, title, interest, property, claim, and demand whatsoever, of the said Clement C. Moore, of, in, and to the real estate mentioned in the said act, whereby the said real estate became exclusively vested in the said Thomas B. Clarke and his children: And whereas the said Thomas B. Clarke hath prayed the legislature to alter and amend the said act, particularly in relation to the interest of the said Clement C. Moore, and the execution of certain of the trusts in the said act mentioned: therefore,

I. Be it enacted by the people of the State of New York, represented in senate and assembly, That all the beneficial interests and estate of the said Clement C. Moore, or those under him, arising or to arise by virtue of the act to which this is a supplement, or by the will mentioned in the said act, shall be and the same is hereby vested in the said Thomas B. Clarke, his heirs and assigns, and so much of the act to which this is a supplement as is repugnant hereto, and so much thereof as requires the trustees to set apart and reserve a certain annual stipend out of the interest or income of the property thereby directed to be sold for the purpose of creating an accumulating fund at compound interest, during the life of the said Thomas B. Clarke, and so much of the said act as requires the several duties therein enumerated to be performed by trustees to be appointed by the court of chancery, as therein mentioned, be, and the same is hereby repealed.

II. And be it further enacted, That the said Thomas B. Clarke be, and is hereby, authorized and empowered to execute and perform every act, matter and thing, in relation to the real estate mentioned in the act to which this is a supplement, in like manner and with like effect that trustees duly appointed under the said act might have done, and that the said Thomas B. Clarke apply the whole of the interest and income of the said property to the maintenance and support of his family, and the education of his children.

III. And be it further enacted, That no sale of any part of the said estate shall be made by the said Thomas B. Clarke, until he shall have procured the assent of the chancellor of this State to such sale, who shall, at the time of giving such assent, also direct the mode in which the proceeds of such sale, or so much thereof as he shall think proper, shall be vested in the said Thomas B. Clarke, as trustee; and further, that it shall be the duty of the said Thomas B. Clarke annually to render an account to the chancellor, or to such person as he may appoint, of the principal of the proceeds of such sale only, the interest being to be applied by the said Thomas B. Clarke, in such manner as he may think proper, for his use and benefit, and for the maintenance and education of his children; and if, on such return, or at any other time, and in any other manner, the chancellor shall be of opinion that the said Thomas B. Clarke hath not duly performed the trust by this act reposed in him, he may remove the said Thomas B. Clarke from his said trust, and appoint another in his stead, subject to such rules as he may prescribe in the management of the estate hereby vested in the said Thomas B. Clarke as trustee.

Petition of T. B. Clarke to the Chancellor—28th June, 1815.

To the Honorable James Kent, Chancellor of the State of New York.

The petition of Thomas B. Clarke, of the city of New York, respectfully showeth:

That Mary Clarke, late of the city of New York, widow, deceased, the grandmother of your petitioner, in and by her last will and testament, bearing date the sixth day of April, in the year of our Lord one thousand eight hundred and two, did, among other things, devise unto Benjamin Moore, and Charity, his wife, and Elizabeth Maunsell, and to their heirs forever, certain premises in the fifth ward of the city of New York, consisting of a house and lot fronting on Broadway, and then occupied by one Thomas Byron; and certain other premises situate at Greenwich, in the ninth ward of the said city of New York, on the Hudson's river, being all that part of the farm of the said Mary Clarke at Greenwich aforesaid, called Chelsea, lying on the northward of a certain line, by her, the said Mary Clarke, in and by her said last will and testament directed to be drawn from the Greenwich road to the Hudson's river, twelve feet to the northward of the fence standing behind the house then occupied by John Platt, bounded southerly by the said line, northerly by the land of Cornelius Ray, easterly by the Greenwich road, and westerly by the Hudson river, including that part of the said farm under lease to Robert Lenox, with the appurtenances, to have and to hold to the said Benjamin Moore, and Charity, his wife, and the said Elizabeth Maunsell, and to the survivors and survivor of them, and the heirs of such survivor as joint tenant and not as tenant in common, in trust to receive the rents, issues, and profits thereof, and to pay the same to your petitioner, one of the devisees of the testatrix, during his natural life; and from and after the death of your petitioner, in further trust to convey the same to the lawful issue of your peti-

tioner living at his death, in fee; and if your petitioner should not have any lawful issue at the time of his death, then in the further trust and confidence to convey the said devised premises to Clement C. Moore, also one of the devisees of the said testatrix, and to his heirs, or to such person in fee as he might by will appoint in case of his death prior to that of your petitioner, as by the said last will and testament of the said Mary Clarke, deceased, reference being had to the same, fully and at large may appear. And your petitioner further showeth that the said devised premises, situate at Greenwich aforesaid, contain thirty-nine acres and one-half acre of land, or thereabouts, and that four acres and three-quarters of an acre thereof, or thereabouts, were under lease to the said Robert Lenox, in the said will named, for a term whereof about three years are yet unexpired, at the yearly rent of twenty-five dollars per acre per annum. And your petitioner further showeth, that since the death of the testatrix, about three roods and twenty-five perches of the said premises have been leased by the trustees in the said will named, by your petitioner as their attorney, to the said Robert Lenox for a term of years whereof about ten years are unexpired, at the rate of the yearly rent of forty-five dollars per acre; and ten acres and one rood of the same premises, or thereabouts, have been leased by the said trustees, by your petitioner as their attorney, to Michael Hagan for a term whereof ten years, or thereabouts, are unexpired, at the yearly rent of four hundred and sixty-one dollars and fifty-four cents per annum; and that the residue of the said premises, being about twenty-four acres of land, are under lease from the said trustees, by your petitioner as their attorney, to the president and directors of the Manhattan Company, for securing to them the payment of the sum of four thousand four hundred dollars borrowed of them by your petitioner, with interest for the same, part of which said last mentioned leasehold premises are underlet by the said lessees thereof at the yearly rent of two hundred dollars, or thereabouts. And your petitioner further showeth, that the said lot fronting on Broadway, in the fifth ward of the city of New York, is under lease to George Sinclair for the term of twenty-one years from the first day of May, in the year one thousand eight hundred and thirteen, at the yearly rent of four hundred and fifty dollars per annum. And your petitioner further showeth, that some time in the year one thousand eight hundred and fourteen the said devised premises, not yielding a sufficient revenue or income to support your petitioner and family, and in its then situation, and the condition in which it was placed by the said will of the said testatrix, not admitting of being so improved as to yield an adequate income for that purpose, and the said Benjamin Moore and Charity, his wife, and Elizabeth Maunsell, the said trustees in the said will named, all being aged or infirm, and wishing to be discharged from the said trust, and as well they, the said trustees, in and by an instrument of writing under their hands and seals, bearing date and executed by them on or about the eleventh day of January, in the said last mentioned year, as also the said above named Clement C. Moore, by an instrument in

writing under his hand and seal, bearing date on or about the same last mentioned day and year, consenting and agreeing to all such acts the legislature of this State should deem meet and proper to make for the benefit and relief of your petitioner, or of his issue, heirs and assigns, in and concerning the premises; and they, the said Benjamin Moore and Charity, his wife, and Elizabeth Maunsell, by the said instrument in writing, under their hands and seals, also consenting and desiring that some other person or persons might be substituted for them, in their place and stead as trustee as aforesaid, and they be discharged from the said trust, your petitioner made application to the legislature of this State for aid and relief in and concerning the premises; and an act was thereupon passed by the said legislature, on the first day of April, in the same last mentioned year, entitled "An act for the relief of Thomas B. Clarke," and in and by which said act it was, among other things contained therein, enacted, in substance and to the effect as follows, that is to say, that it should and might be lawful for the court of chancery, on the application of your petitioner, to constitute and appoint one or more trustees, to execute and perform the several trusts and duties specified and set forth in the said last will and testament of the said before named testatrix, in the place and stead of the said Benjamin Moore and Charity, his wife, and Elizabeth Maunsell, who were thereby discharged from the trusts in the said will mentioned; and further, that the trustees to be appointed under the authority of that act, or the major part of them, should, as soon as conveniently might be, partition and divide the said tract of land and premises, situate at Greenwich aforesaid, and in and by the will aforesaid devised by the said testatrix to your petitioner as aforesaid, into two equal parts, one moiety whereof should be held by them to the use and upon the trusts declared in and by the said will, and the remaining moiety should be subdivided by the said trustees, or the major part of them, into so many lots as they, or the major part of them, might think thereto most likely to effect an advantageous sale thereof; and after having completed such subdivision, the said trustees, or the major part of them, were, by the said act, authorized and required, within a convenient time thereafter, not to exceed six months, except at the request of your petitioner, to sell and dispose of the said subdivided moiety, and also the said house and lot fronting on Broadway, in the fifth ward of the city of New York, in such manner and upon such terms as they, or the major part of them, might deem best for the interest of the several parties interested therein, and thereupon to make and execute good and sufficient deeds or conveyances in the law to the purchaser or purchasers thereof—which deeds or conveyances should operate to convey to the said purchaser or purchasers respectively all the estate, right, title, and interest which the said Mary Clarke, the said testatrix, had at the time of her death in and to the said premises; and further, that the said trustees, or a major part of them, within a convenient time after the said sale, for the purpose of securing the principal of the proceeds thereof to the uses and according

to the trusts declared in and by the said will, and for the further purpose of creating an income for the benefit and support of your petitioner, his family and children, should invest the said proceeds in any public stock of the United States, or of this State, or bank stock, or should put the same out at interest on real security from time to time as they, ora major part of them, should deem most for the interest of the parties concerned therein; and that the said trustees, or a major part of them, should, out of the interest and income of the said proceeds, in the first place, set apart and reserve, for the first four years, eight hundred dollars a year, and from and after the expiration of the said four years, one thousand dollars a year during the natural life of your petitioner—the said annual reservation, together with the interest thereof from time to time accruing, to be invested in stock, or put out on real security by the said trustees, or a majority of them, for the purpose of creating an accumulating fund at a compound interest during the life of your petitioner, for the benefit of his children after his decease, to be then disposed of by the said trustees, or a majority of them, to the uses and according to the trusts declared in and by the last will and testament aforesaid; and that the residue of the said income that might remain from year to year, after making the reservations aforesaid, should be paid by the said trustees, or a major part of them, to your petitioner for his use and benefit, and for the maintenance of his family and the education and support of his children. And in, and by which said act of the legislature aforesaid, it was further enacted, in substance, that the said principal sum of money arising from the said sales, and by that act directed to be vested and put out at interest as aforesaid, should be held by the said trustees, or the major part of them, according to the will aforesaid, that is to say, in trust, to be assigned and paid over to the lawful issue of your petitioner living at his death; and if your petitioner should not have any lawful issue at the time of his death, then to be assigned or paid over to the aforesaid Clement C. Moore or his representatives, or to such person as the said Clement C. Moore might by will appoint, in case of his death prior to that of your petitioner, as by the said act of the legislature in that behalf, reference being had thereto, may fully appear, and to which act your petitioner, for greater certainty, begs leave to refer himself. And your petitioner further showeth, that the said Clement C. Moore, in the act aforesaid named, having, after the passing of the said act, by an indenture duly executed by him, and recorded in the office of the Secretary of this State, bearing date on or about the twenty-first day of February, in the year one thousand eight hundred and fifteen, for the consideration therein expressed, and in due form of law released and conveyed unto your petitioner, his heirs and assigns forever, all the estate, right, title, interest, property, claim, and demand whatsoever of him, the said Clement C. Moore, of, in and to the real estate mentioned in the said act, whereby the said real estate became exclusively vested in your petitioner and his children; a certain other act of the legislature of the State of New York was, on or about the twenty-fourth day of March,

in the year of our Lord one thousand eight hundred and fifteen, passed on the application of your petitioner, for the further aid and relief of your petitioner in the premises, entitled "An act supplemental to the act for the relief of Thomas B. Clarke," passed April first, one thousand eight hundred and fourteen, in and by which said last mentioned supplemental act, it was, amongst other thing contained therein, enacted, in substance, as follows, that is to say, that all the beneficial interest and estate of the said Clement C. Moore, or those under him, arising, or to arise by virtue of the acts to which that supplementary act is a supplement, or by the will mentioned in the said first or original act, should be, and the same was, by the said supplemental act, vested in your petitioner, his heirs and assigns; and so much of the said original act to which the said supplemental act was a supplement, as was repugnant thereto, and so much of the said original act as required the trustees to set apart and reserve a certain annual stipend, out of the interest or income of the property thereby directed to be sold, for the purpose of creating and accumulating from it compound interest, during the life of your petitioner, and so much of the said act as required the several duties therein enumerated to be performed by trustees to be appointed by the court of chancery, as therein mentioned, should be, and the same was, by the said supplemental act, repealed; and further, that your petitioner should be, and he was, and he is, by the said supplemental act, authorized and empowered to execute and perform every act, matter and thing, in relation to the real estate mentioned in the act, to which that supplemental act was a supplement, in like manner, and with like effect that trustees duly appointed under the said act might have done, and that your petitioner apply the whole of the interest and income of the said property to the maintenance and support of his family, and the education of his children; and in and by which said supplemental act, it is further enacted, that no sale of any part of the said estate shall be made by your petitioner, until he, your petitioner, shall have procured the assent of the chancellor of this State to such sale, who shall, at the time of giving such assent, also direct the mode in which the proceeds of such sale, or so much thereof as he shall think proper, shall be vested in your petitioner, as by the said last mentioned and supplemental act, reference being had to the same, may, among other things contained therein, fully and at large appear, and to which, for greater certainty, your petitioner begs leave to refer himself. And your petitioner further showeth, that he has a large and expensive family, consisting, besides himself, of a wife and six children, the eldest of whom is of the age of between eleven and twelve years, and the youngest an infant under the age of one year. And your petitioner further showeth, that the rents, profits, and income of the said real estates and premises so devised to him by the said Mary Clarke, the aforesaid testatrix, in manner aforesaid, and in the said acts of the legislature mentioned as aforesaid, are the sole and only resource and dependence of your petitioner for the maintenance and support of himself and his family, and the education of his child-

ren, several of whom are of ages that require an annual expenditure to a considerable amount therein. And your petitioner further showeth, that the said rents, profits, and income of the said estates are wholly inadequate and greatly deficient to and for the said purposes, and that the same have been inadequate thereto ever since the marriage and settlement in life of your petitioner and his wife. And your petitioner further showeth, that he has no profession or calling whereby he could add, by his earnings therein, to his income or resources, and that, to supply the said deficiency, which has been continually increasing, and to provide and procure the necessary funds and means for the support and maintenance of himself and his family, he, your petitioner, has been reduced to the necessity of incurring debts, and having recourse to loans; and that for those purposes, and the discharge of other demands against him, he borrowed of the president and directors of the Manhattan Company aforesaid, the aforesaid sum of four thousand four hundred dollars, in the year of our Lord one thousand eight hundred and five, the chief part of which was required for and applied to the exigencies of his family, and that he has subsequently contracted debts by the purchase on credit of article of indispensable necessity for himself and family, and by borrowing money of individuals to be applied, and which has been applied to the same purposes, to the amount of four thousand five hundred dollars and upwards, and that he is now indebted in the premises for principal and interest, in the sum of and upwards. And your petitioner further showeth, that his own necessities and the interests and welfare of his wife and children require that sale should be made of what was authorized and directed by the herein first above mentioned act to be sold, of the said real estates and devised premises, in the said act mentioned, and that so much of the net proceeds to arise and be received, by and from such said sale thereof as may be necessary for the purpose, should be appropriated and applied in and for the payment and discharge of the said debts so contracted and incurred by your petitioner, for the purposes aforesaid, and the residue of the said net proceeds be vested in your petitioner as trustee under the supplemental act aforesaid, upon the trusts and for the purposes in and by the said act, in this behalf, expressed and declared, in the mode wherein your Honor shall see fit and be pleased to direct the same to be so vested in him, your petitioner. And your petitioner further showeth, that he understands and believes that the lessees and occupants of the eastern moiety or half part of the said premises at Greenwich, in the ninth ward of the city of New York, to be divided by a line drawn from the land of C. Ray to the southern boundary of the said premises, except a small part thereof, will consent that the said leasehold premises should be sold free, and discharged from their said leases thereon, and unencumbered thereby. Wherefore your petitioner respectfully prays that your Honor will be pleased to authorize, assent to and direct the sale of said eastern moiety or half part of the said premises at Greenwich aforesaid, to be divided in manner aforesaid, or the one moiety or half part of the said premises, according to some other division and partition

thereof, to be designated and directed by your Honor, as also the said house and lot of ground and premises fronting on Broadway aforesaid, in the fifth ward of the city of New York aforesaid, by your petitioner, for the objects and purposes hereinbefore mentioned, and by the act aforesaid authorized and contemplated; and that your Honor will be pleased to give such directions for, and touching the said sales thereof as may appear to your Honor to be meet and proper, and that your Honor will be pleased to authorize, order, and direct at the same time that so much of the nett proceeds of such sales as may be necessary for the purpose be appropriated and applied in and for the payment and discharge of the said debts so contracted and incurred by your petitioner as aforesaid, for the purposes aforesaid, and that the residue of the said nett proceeds of the said sales be vested in the name of your petitioner as trustee as aforesaid, in and upon some good productive stocks or funds of a permanent nature, or at interest upon real security, or otherwise as your Honor may see fit to order and direct; and your petitioner will ever pray, &c.

T. B. CLARKE.

STATE OF NEW YORK, *ss.*

Thomas B. Clarke, the petitioner in the foregoing petition named, being duly sworn, deposeth and saith that the facts set forth and contained in the said foregoing petition which rest in his knowledge are true, and that those which he derives from the information of others he believes it to be true.

T. B. CLARKE.

Sworn 28th day of June, 1815, before
THEOD. V. W. VARICK, *Mast. in Chancery.*

(28th June, 1815.)
A copy: HIRAM WALWORTH, *Assistant Register.*

Order of Reference.

At a court of chancery held for the State of New York, at the City Hall of the city of New York, on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and fifteen: present, the honorable James Kent, esq., chancellor. In the matter of the petition of Thomas B. Clarke, under the acts of the legislature herein mentioned. On reading the petition in this matter, praying for the assent of the chancellor to the sale of the premises, in the said petition mentioned, and in and by the acts of the legislature of the State, passed on the first day of April, in the year of our Lord one thousand eight hundred and fourteen, entitled "An act for the relief of Thomas B. Clarke, and the act supplementary thereto, in the said petition mentioned, for the objects and purposes in the said last mentioned act, and the petition mentioned, and for the direction of the chancellor, for the application of so much of the proceeds of the said sales as may be necessary to, and for the payment of the debts of the petitioner, in the said petition mentioned, and of the

mode in which the residue of the said proceeds shall be vested in the petitioner, as trustee made in pursuance of the supplemental act aforesaid, and the affidavit of the petitioner of the truth of the facts set forth in his said petition; which petition and affidavit being filed, on motion of Mr. S. Jones jr., of counsel for the petitioner, it is ordered that it may be referred to one of the masters of this court, to examine into the allegations and matters in the said petition set forth and contained, and to report thereon to this court with all convenient speed, and that all directions be reserved until the coming in of the said report."

Master's Report—Dated 30th day of June, 1815

In Chancery. In the Matter of the Petition of Thomas B. Clarke, under the acts of the Legislature, in the said petition mentioned.

STATE OF NEW YORK, *ss.*

In pursuance of an order of this honorable court, made in the above matter, and bearing date on the twenty-eighth day of June, one thousand eight hundred and fifteen, by which it is referred to one of the masters of this court to examine into the allegations and matters in the said petition of the said Thomas B. Clarke, set forth and contained, and report thereon with all convenient speed: Now, therefore, I, the subscriber, one of the masters of this court, do respectfully report that I have examined the act entitled "An act for the relief of Thomas B. Clarke," passed April 1st, 1814, and the act passed on the twenty-fourth day of March, 1815, entitled "An act supplemental to the act for the relief of Thomas B. Clarke," passed April 1st, 1814, in the said petition in part recited and referred to, and find that the matters and things therein contained, and the authority and estate thereby vested, are the same in substance and purport as in or by the said is set forth and recited. And I do further report, that four acres and three-fourths of an acre, parcel of the premises, situate at Greenwich, in the said petition mentioned, were leased to Robert Lenox, in the said petition named, from the first day of May, one thousand eight hundred, for and during the term of eighteen years, for the yearly rent of one hundred and eighteen dollars and seventy-five cents, making twenty-five dollars per acre per annum, of which term nearly three years are unexpired, as in said petition is stated; that three roods and thirty-five perches, other parcels of the said premises, were leased to the said Robert Lenox, by the said petitioner, as attorney to the trustees of the said premises named in the will of Mary Clarke in the said petition and said first mentioned act named, as in and by the said petition is stated, from the first day of August, one thousand eight hundred and four, for and during the term of twenty-one years, at the yearly rent of forty-three dollars and seventy cents, being at the rate of forty-five dollars per acre per annum, of which term upwards of ten years are unexpired, as in the said petition is stated; that ten acres one rood and one perch, other parcel of the said premises, were leased by the said petitioner as attorney as aforesaid to Michael Hogan, from the first day of August,

one thousand eight hundred and four, for and during the term of twenty-one years, at the yearly rent of four hundred and sixty-one dollars and fifty-four cents, of which said term upwards of ten years are still unexpired, as in said petition is stated. All which satisfactorily appears from an examination by me, made of the respective leases for the several above mentioned parcels of the aforesaid premises at Greenwich. And I do further report, that the residue of the said premises at Greenwich, constituting nearly the eastern moiety thereof, to be divided by the line in that behalf mentioned in the said petition, and comprising about twenty-four acres of land, were leased by the said petitioner, as attorney as aforesaid, to the Manhattan Company in the city of New York, from the fifteenth day of July, one thousand eight hundred and five, for and during the term of twenty-one years, of which said term eleven years or thereabouts are still unexpired, for the purpose of securing to the said company the payment of the sum of four thousand four hundred dollars borrowed of them by the said petitioner, with interest, as appears from the examination of the said lease, made by me, part of which said leasehold premises are underlet by the said lessees thereof at the yearly rent of two hundred dollars, as appears from the examination of Henry Remsen, the president of the said company, and which said debt still remains due and unpaid, as also appears by the said examination by me taken in the premises. And I do further report, that the lot on Broadway, in the fifth ward of the city of New York, mentioned in the said petition, were leased by the said petitioner as attorney as aforesaid, to George Sinclair, in the said petition named, for and during the term of twenty-one years, from the first day of May, one thousand eight hundred and thirteen, at the yearly rent of four hundred and fifty dollars, as in said petition is stated, of which said term nearly nineteen years are unexpired, as appears by an examination of the said lease. And I do further report, that Henry Remsen, president of the Manhattan Company above mentioned, to which said company nearly the whole of the eastern moiety of the said premises at Greenwich was leased as aforesaid, upon his examination before me stated that the said company of which he is president are willing and will consent, as in the said petition is forth, that the said leasehold premises should be sold free and discharged from the said lease thereon, and unencumbered thereby, so, however, that and upon condition that the aforementioned debt of the petitioner to the said company, with the interest due thereon, be first paid and satisfactorily secured to be paid to the said company by and out of the proceeds of such sale, and that the proper directions be given for that purpose in the order to be made by the court in the premises. And I do further report, that the said petitioner is indebted to divers persons in large and considerable amounts, that I have examined his several creditors as to their respective debts, and as far as proof was attainable from his said creditors, it appears that the sums by him borrowed, and the debts by him contracted, with the exception of what constitutes part of the said debt due to the Manhattan Company aforesaid, were appropriated to and incurred for the maintenance or his family, as in said petition is set forth; and when such

proof was not to be procured, I have taken the deposition of the said petitioner as to the application of the moneys so borrowed, from which it appears that all such moneys, except as aforesaid, were applied as above stated. And I do further report, that I find the said petitioner indebted unto Henry Simmons, on bonds and notes, in the sum of one thousand three hundred dollars and upwards; unto James Davidson on bond in the sum of one thousand dollars and upwards; unto James Oakley on book account in the sum of one hundred and seventy dollars and upwards; unto Robert Stuart on book account in the sum of one hundred and thirty-five dollars or thereabouts; unto John Wallis for money lent and costs of suit at sundry times in the sum of five hundred and twenty dollars and upwards; unto George Sinclair on note in the sum of one hundred and seventy dollars and upwards; unto Tenbroeck on note in the sum of one hundred and seventy dollars and upwards; unto Frederick Garner in the sum of five hundred and twenty dollars and upwards on bond and book account; unto the Manhattan Bank on note in the sum of three hundred dollars and upwards; unto Richard Despard in the sum of three hundred and sixty dollars and upwards; unto Samuel W. Moore in the sum of seventy dollars on book account; and to divers other persons, as appears from the affidavit of the said petitioner, no other proof being produced thereof, in the sum of seven hundred dollars and upwards, all which several sums in the whole amount to five thousand four hundred dollars and upwards. And I do further report, that it appears from the deposition of Samuel W. Moore that the said petitioner was married in the year one thousand eight hundred and two; that he has a large and increasing family, consisting of a wife and six children, the eldest of whom is between eleven and twelve years of age, and the youngest, an infant, under the age of one year; that the said petitioner is engaged in no profession or occupation, and that he is greatly embarrassed by the debts aforesaid and the heavy expenses incurred for the maintenance of his family and the education of his children. And I do further report, that it satisfactorily appears to me that the rents and profits of the said house and lot fronting on Broadway aforesaid, and the said premises at Greenwich aforesaid, are not, and from the local situation and state of improvement thereof, and of the said premises at Greenwich, even if unincumbered by the present leases thereof, could not be made adequate or sufficient for the support of the said petitioner and his family, and the education of his children, even if the whole thereof could be applied thereto; and that the same, after paying thereout the interest of the aforesaid debts of the petitioner, would be insufficient for the reasonable and proper support of the petitioner and his family according to their situation in life, and would admit of no provision or allowance for the education of the children of the petitioner.

All which is respectfully submitted.

THEOD. V. W. VARICK,
Master in Ch'y.

(Filed July 3d, 1815.)

Order of the Chancellor.—July 3, 1815.

At a court of chancery held for the State of New York, at the city of New York, on the third day of July, in the year of our Lord one thousand eight hundred and fifteen, present the honorable James Kent, esq., chancellor, in the matter of the petition of Thomas B. Clarke, under the acts of the legislature therein mentioned.

The petitioner having presented his petition to the chancellor, in substance setting forth, among other things, the devise of a certain house and lot of land in the fifth ward of the city of New York, and certain land and premises in the ninth ward of the said city, in the said petition more particularly mentioned, by Mary Clarke, therein mentioned, by her last will and testament, to certain trustees therein named, upon trust to receive the rents and profits thereof, and pay the same to the petitioner, during his natural life, and from and after his decease to convey the said premises to his lawful issue living at his death, in fee, and if he, the petitioner, should not leave any lawful issue at the time of his death, then to convey the same to Clement C. Moore, in the said will named, and his heirs, or such person in fee as he might by will appoint, in case of his death prior to that of the petitioner; the release and conveyance by the said Clement C. Moore of all his estate, right and interest, claim and demand, in and to the said devised premises to the petitioner, and the parts and provisions of and in the act entitled An act for the relief of Thomas B. Clarke, and an act supplementary thereto, in the said petition in substance recited, by the first of which acts, viz: the act entitled An act for the relief of Thomas B. Clarke, passed on the application of the petitioner, and with the consent of the trustees in the will aforesaid named, and of the said Clement C. Moore, before the said release and conveyance by the said Clement C. Moore, of his estate and interest in the said devised premises to the petitioner, the said trustees in the will aforesaid named were, with their assent, discharged from the said trust, and an authority given to this court to constitute and appoint one or more trustees in their place and stead, on the application of the petitioner, to execute and perform the several trusts and duties, in the said will and in that act expressed and contained, and in and by which said act the trustees to be appointed under the authority thereof, or a major part of them, were directed to divide the said premises at Greenwich, in the ninth ward of the city of New York, into two equal parts, one moiety thereof to remain in trust, and the remaining moiety to be subdivided into suitable lots for the advantageous sale thereof, and the same when so subdivided, and also the said house and lot in the fifth ward of the city of New York, to be sold and disposed of, and conveyances executed and given for the same, to the purchasers thereof, and the nett proceeds thence arising to be put out and invested as authorized by the said act, and a given part of the interest and income of the said proceeds to be annually in the first place set apart, reserved and invested during the natural life of the petitioner, to create an accumulating fund, for the benefit of those in remainder, being the lawful issue of the petitioner, living at the time of

his death, or in default of such issue to the said Clement C. Moore, and the residue of the said interest, for his use and benefit, and the support of his family and education of his children, and the principal of the said proceeds to be held and disposed of by the trustees according to the trusts of the will aforesaid, in that behalf, and in and by which said supplemental act, passed subsequently to the release and conveyance of the said Clement C. Moore, of his estate and interest in and to the said premises to the petitioner, all the beneficial interest and estate of the said Clement C. Moore and those under him, arising or to arise by the said first mentioned act, or the said will mentioned therein, so as vested in the petitioner, his heirs, and assigns, and by which said supplemental act, the parts and provisions therein specified of the first mentioned act were repealed, and he, the petitioner, was authorized and empowered to execute and perform every act, matter, and thing, in relation to the real estate mentioned in the said original or first mentioned act, in like manner and with like effect that the trustees duly appointed under the said act might have done, and to apply the whole of the interest and income of the said property to the maintenance of his family and the education of his children; but it was further provided and enacted, that no sale of any part of the said estate should be made by the petitioner, until he should have procured the assent of the chancellor of this State to such sale, who should at the time of giving such assent, also direct the mode in which the proceeds of such sale, or so much thereof as he should think proper, should be vested in the petitioner as trustee; and the said petitioner further setting forth in and by his said petition, that he has a large and expensive family, consisting besides himself of a wife and six children, the oldest between eleven and twelve years of age, and the youngest under one year; that the rents and profits and income of the said trust premises are the sole resource and dependence of him, the petitioner, for the maintenance and support of himself and his family, and the education of his children, several of whom are of ages that require a considerable annual expenditure therein; that the said trust premises are under the leases, on the several parts and parcels thereof, in the said petition mentioned, and that the rents, profits, and income thereof are inadequate to the purpose aforesaid, and have been inadequate thereto ever since the marriage and settlement in life of him, the petitioner, and that to supply the deficiency, which has been continually increasing, and provide and procure the necessary means and funds, for the support of himself and his family, he has been reduced to the necessity of contracting and incurring debts, and that for those purposes, and the discharge of other demands against him, he borrowed of the president and directors of the Manhattan Company the sum of four thousand and four hundred dollars, in the year one thousand eight hundred and five, and has subsequently contracted other debts, by purchases on credit of articles of indispensable necessity, for himself and his family, and by borrowing moneys to be applied, and which he has applied to the same purpose, and that his own necessities, and the interest and welfare of his family,

Order of the Chancellor.—July 3, 1815.

At a court of chancery held for the State of New York, at the city of New York, on the third day of July, in the year of our Lord one thousand eight hundred and fifteen, present the honorable James Kent, esq., chancellor, in the matter of the petition of Thomas B. Clarke, under the acts of the legislature therein mentioned.

The petitioner having presented his petition to the chancellor, in substance setting forth, among other things, the devise of a certain house and lot of land in the fifth ward of the city of New York, and certain land and premises in the ninth ward of the said city, in the said petition more particularly mentioned, by Mary Clarke, therein mentioned, by her last will and testament, to certain trustees therein named, upon trust to receive the rents and profits thereof, and pay the same to the petitioner, during his natural life, and from and after his decease to convey the said premises to his lawful issue living at his death, in fee, and if he, the petitioner, should not leave any lawful issue at the time of his death, then to convey the same to Clement C. Moore, in the said will named, and his heirs, or such person in fee as he might by will appoint, in case of his death prior to that of the petitioner; the release and conveyance by the said Clement C. Moore of all his estate, right and interest, claim and demand, in and to the said devised premises to the petitioner, and the parts and provisions of and in the act entitled An act for the relief of Thomas B. Clarke, and an act supplementary thereto, in the said petition in substance recited, by the first of which acts, viz: the act entitled An act for the relief of Thomas B. Clarke, passed on the application of the petitioner, and with the consent of the trustees in the will aforesaid named, and of the said Clement C. Moore, before the said release and conveyance by the said Clement C. Moore, of his estate and interest in the said devised premises to the petitioner, the said trustees in the will aforesaid named were, with their assent, discharged from the said trust, and an authority given to this court to constitute and appoint one or more trustees in their place and stead, on the application of the petitioner, to execute and perform the several trusts and duties, in the said will and in that act expressed and contained, and in and by which said act the trustees to be appointed under the authority thereof, or a major part of them, were directed to divide the said premises at Greenwich, in the ninth ward of the city of New York, into two equal parts, one moiety thereof to remain in trust, and the remaining moiety to be subdivided into suitable lots for the advantageous sale thereof, and the same when so subdivided, and also the said house and lot in the fifth ward of the city of New York, to be sold and disposed of, and conveyances executed and given for the same, to the purchasers thereof, and the nett proceeds thence arising to be put out and invested as authorized by the said act, and a given part of the interest and income of the said proceeds to be annually in the first place set apart, reserved and invested during the natural life of the petitioner, to create an accumulating fund, for the benefit of those in remainder, being the lawful issue of the petitioner, living at the time of

his death, or in default of such issue to the said Clement C. Moore, and the residue of the said interest, for his use and benefit, and the support of his family and education of his children, and the principal of the said proceeds to be held and disposed of by the trustees according to the trusts of the will aforesaid, in that behalf, and in and by which said supplemental act, passed subsequently to the release and conveyance of the said Clement C. Moore, of his estate and interest in and to the said premises to the petitioner, all the beneficial interest and estate of the said Clement C. Moore and those under him, arising or to arise by the said first mentioned act, or the said will mentioned therein, so as vested in the petitioner, his heirs, and assigns, and by which said supplemental act, the parts and provisions therein specified of the first mentioned act were repealed, and he, the petitioner, was authorized and empowered to execute and perform every act, matter, and thing, in relation to the real estate mentioned in the said original or first mentioned act, in like manner and with like effect that the trustees duly appointed under the said act might have done, and to apply the whole of the interest and income of the said property to the maintenance of his family and the education of his children; but it was further provided and enacted, that no sale of any part of the said estate should be made by the petitioner, until he should have procured the assent of the chancellor of this State to such sale, who should at the time of giving such assent, also direct the mode in which the proceeds of such sale, or so much thereof as he should think proper, should be vested in the petitioner as trustee; and the said petitioner further setting forth in and by his said petition, that he has a large and expensive family, consisting besides himself of a wife and six children, the oldest between eleven and twelve years of age, and the youngest under one year; that the rents and profits and income of the said trust premises are the sole resource and dependence of him, the petitioner, for the maintenance and support of himself and his family, and the education of his children, several of whom are of ages that require a considerable annual expenditure therein; that the said trust premises are under the leases, on the several parts and parcels thereof, in the said petition mentioned, and that the rents, profits, and income thereof are inadequate to the purpose aforesaid, and have been inadequate thereto ever since the marriage and settlement in life of him, the petitioner, and that to supply the deficiency, which has been continually increasing, and provide and procure the necessary means and funds, for the support of himself and his family, he has been reduced to the necessity of contracting and incurring debts, and that for those purposes, and the discharge of other demands against him, he borrowed of the president and directors of the Manhattan Company the sum of four thousand and four hundred dollars, in the year one thousand eight hundred and five, and has subsequently contracted other debts, by purchases on credit of articles of indispensable necessity, for himself and his family, and by borrowing moneys to be applied, and which he has applied to the same purpose, and that his own necessities, and the interest and welfare of his family,

require that sale should be made of what was authorized and directed by the herein first mentioned act to be sold of the said trust premises, and so much of the proceeds as might be necessary applied to the payment of the said debts of the petitioner, and the residue vested in him as trustee, under the supplemental act aforesaid, for the purposes therein mentioned; and that he, the petitioner, expected to be able to obtain the consent of the lessees of nearly the whole of the eastern moiety of the said premises at Greenwich, to be divided by the line in the said petition mentioned and described, to the sale thereof, free and discharged from the lease thereof, and praying the chancellor to give his assent to, and authorize the sale by the petitioner of the said eastern moiety of the said premises at Greenwich, or such other moiety thereof as the chancellor might be pleased to designate and direct, and also of the said house and lot, in the said fifth ward of the city of New York, for the objects and purposes in the said petition mentioned, and by the acts aforesaid authorized and contemplated, and to give such directions for, and touching the said sale, as he might deem meet and proper, and further praying the chancellor to authorize, order and direct, that so much of the nett proceeds of such sales as might be necessary for the purpose should be appropriated and applied to the payment and discharge of the said debts so contracted and incurred by him, the petitioner, for the purposes aforesaid, and the residue thereof vested in the name of him, the petitioner, as trustee as aforesaid, in such mode as the chancellor should direct, in and upon some good productive stocks or funds of a permanent nature, or on interest upon real security, or otherwise as might be directed by the chancellor; and it having been referred by this court, by an order made in this matter on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and fifteen, to one of the masters of this court, to examine into the allegations and matters in the said petition set forth and contained, and to report thereon, and Theodorus V. W. Varick, esquire, one of the masters of this court, having, in pursuance of the said order of reference, made a report in the premises to this court, whereby it appears that he, the said master, has examined into the matters and allegations set forth in the said petition, as he was directed by the said order to do, and found the same to be true, and that the petitioner is indebted over and above the said debt of four thousand four hundred dollars, to the Manhattan Company aforesaid, to the amount of five thousand four hundred dollars and upwards, and that he is not engaged in any profession or occupation, and is greatly embarrassed by his said debts, and further, that the said trust premises are under the several leases thereof in the said report particularly specified, and that it satisfactorily appeared to him, the said master, that the rents and profits of the said trust estate are not, and, from the local situation and state of improvement thereof, and of the said premises at Geenwich, in particular, even if unimcumbered by the present leases thereof, would not be made adequate or sufficient for the support of the petitioner and his family, and the education of his children, even if the

whole of the said rents and profits could be applied thereto, and that the same, after paying thereout the interest of the said debts of the petitioner, would be insufficient for the reasonable and proper support of the petitioner and his family, according to their situation in life, and would admit of no provision or allowance for the education of the children of him, the petitioner; and it further appearing by the said report, that nearly the whole of the said eastern moiety of the said premises at Greenwich, in the ninth ward of the city of New York, to be divided by the line in that behalf mentioned in the said petition, is included in a lease by way of mortgage, executed by the petitioner, as attorney for the trustees, in the will aforesaid named, of and upon the premises described to the president and directors of the Manhattan Company aforesaid, for the term of twenty-one years, from the fifteenth day of July, one thousand eight hundred and five, for the purpose of securing to the said company the payment of the aforesaid debt, or sum of four thousand four hundred dollars, borrowed of them by the petitioner aforesaid, with interest for the same, and that the said president and directors of the said company are willing, and will consent that the said leasehold premises be sold, free and discharged from their said lease thereof, and unincumbered thereby, on condition that said debt of the petitioner to the said company, with the interest thereof, be first paid, or satisfactorily secured to the said company, by and out of the proceeds of such sale, and that the proper directions be given for that purpose, in the order to be made by the court, in the premises, which report is filed; therefore, on motion of Mr. S. Jones, junior, of counsel for the petitioner, it is ordered that the assent of the chancellor be, and hereby is, given to the sale, by the petitioner, of the said house and lot in the fifth ward of the city of New York, and of the eastern moiety or half part of the said premises at Greenwich, in the ninth ward of the city of New York, to be divided by the line in the manner for that purpose mentioned in the said petition, and the petitioner is authorized and directed to sell and dispose of the same, under and according to the aforesaid acts of the legislature, in that behalf, the said sales to be made under the direction of one of the masters of this court, and the petitioner to proceed in making the sales and conveyances of the said premises so to be sold, in the manner for that purpose, in and by the said acts prescribed and directed. And it is further ordered, that the purchase moneys for the said premises so to be sold be paid by the purchasers to the said master, to be disposed of by him, as hereinafter directed. And it is further ordered and directed, and his honor the chancellor hereby doth authorize, order and direct, that so much of the nett proceeds, to arise from such sales, as may be necessary for the purpose, be applied under the direction of one of the masters of this court, in and for the payment and discharge of the debts now owing by the petitioner, and to be contracted for the necessary purposes of his family, to be proved before the said master, and the costs, charges, and expenses of the petitioner, on his petition in this matter, and the proceedings had, and to be hereafter had under or in consequence thereof, but so, however, and it is further

ordered and directed, that the nett proceeds of the said eastern moiety of the said premises at Greenwich aforesaid, or so much thereof as shall be necessary for that purpose, be applied in the first place, and before and in preference to any other appropriation or application thereof, to pay and satisfy, to the president and directors of the Manhattan Company aforesaid, the aforesaid debt, or sum of four thousand four hundred dollars, with the interest thereof, up to the time of such payment, or such part and balance of the said debt and interest as shall not have been otherwise paid or satisfied. And it is further ordered and directed, and his honor the chancellor hereby doth further order and direct, that the residue of the said nett moneys, and proceeds arising from such said sales, after the said debts, costs, charges and expenses shall be discharged and paid by and out of the same, be placed out at interest, on real security in the city of New York, in the name of the petitioner as trustee, under the direction of one of the masters of this court, upon the following trusts, to be expressed upon the face and in the body of the said securities respectively, whereon the same shall be so placed, that is to say, upon trust, that the interest and income thereof, or so much of the same as may be required for that purpose, be applied from time to time, in and for the suitable and proper maintenance and support of the petitioner, and his wife and children already born, and to be hereafter born, according to their situation in life, and for the suitable education of the said children, and upon further trust, that the principal sum or sums, with the securities whereon the same may be vested or placed, and may stand, shall be held, and he, the petitioner, as trustee, stand and be possessed thereof, in trust for the benefit of the lawful issue of the petitioner, who shall be living at the death of him, the petitioner, according to the trusts, upon which the unsold moiety of the said premises at Greenwich aforesaid, in the aforesaid acts of the legislature mentioned, are or shall be held, and so, and in such manner, that the said interest and income of the said trust moneys, funds and securities, or so much thereof as may be requisite thereto, shall be appropriated, applied and secured in the first instance, and exclusively to the suitable maintenance of the family of the petitioner according to their situation in life, and the suitable education of his children, and shall not be subject or liable to, or for the engagements, debts or control of the petitioner, or for any other purpose whatsoever than the said purposes hereby designated and authorized, provided that any surplus of the said interest and income that may be left, and remain after the said objects and purposes hereby designated as aforesaid, first fully and liberally fulfilled and accomplished according to the true meaning hereof, shall be for the use and at the disposal of him, the petitioner. And it is further ordered, that the master, under whose direction the said sales should be made, and the debts paid, and surplus proceeds placed out as aforesaid, report to this court the proceedings that may be had in the premises, and the securities that may be taken therein, pursuant to this order, with all convenient speed, and that all and every person or persons who are, or is, or may become interested

therein, have liberty to apply to this court, at any time or times, hereafter, for any further or other orders or directions in or touching the premises.

Petition of Thomas B. Clarke.—March 12, 1816.

To the Honorable the Legislature of the State of New York. The memorial and petition of Thomas B. Clarke, of the city of New York, respectfully showeth:

That his honor the chancellor, under the act "for the relief of Thomas B. Clarke," passed April 1, 1814, and the act "supplemental to the act for the relief of Thomas B. Clarke," passed March 24, 1815, did order and direct, that the said Thomas B. Clarke should sell the eastern moiety or half part of the premises in the said act and order mentioned.

And your petitioner further shows, that owing to the scarcity of money and the present low price of property, no sale can be made without a great sacrifice.

Your petitoner therefore prays, that he may be allowed to mortgage such part of the property in the said act mentioned as the chancellor may appoint, and for the purposes mentioned in the said acts and order, and that your petitioner be allowed to bring in a bill for that purpose. And he will ever pray, &c.*

ASSEMBLY CHAMBER, CLERK'S OFFICE,
Albany, December 5th, 1844.

I hereby certify, that the foregoing is a true copy of an original petition, presented to the Assembly of the State of New York, and referred to Messrs. Lynch, Laight, and Joseph Smith; that said petition has no signature, and that the same is on file among the legislative papers belonging to said Assembly, remaining in this office.

I further certify, that I have made diligent search among the legislative papers belonging to said Assembly, for the years 1814, 1815, and 1816, and I cannot find among said papers any other petition or paper relating to any application or petition of Thomas B. Clarke, nor do I find any evidence among said papers, or remaining in this office, that any testimony was taken or produced before the said Assembly, touching any application or petition of Thomas B. Clarke, except what appears in certain statutes relating thereto, printed in the Session Laws of this State.

JAS. R. ROSE,
Clerk of the Assembly of the State of New York.

Extract from Assembly Journal.—March 12, 1816.

Mr. Lynch, from the select committee to whom was referred the petition of Thomas B. Clarke, reported: That the petitioner was authorized by a law of the last session to sell certain real estate under the di-

*Not signed.

rection of the chancellor; that, from the scarcity of money, he finds a difficulty in making a sale of said property, without a sacrifice, and now prays to be permitted to mortgage said estate, subject to the same restrictions, and under the direction of the court of chancery, in like manner as is contained in said act. The committee are of opinion, that the prayer of the said petitioner is reasonable, and ought to be granted; they have prepared a bill for that purpose, and directed their chairman to ask for leave to bring in the same.

Act of March 29, 1816.

AN ACT further supplemental to an act entitled "An act for the relief of Thomas B. Clarke."

Be it enacted by the people of the State of New York, represented in Senate and Assembly, That the said Thomas B. Clarke be, and he is hereby, authorized, under the order heretofore granted by the chancellor, or under any subsequent order, either to mortgage or to sell the premises which the chancellor has permitted, or hereafter may permit, him to sell, as trustee under the will of Mary Clarke, and to apply the money so raised by mortgage or sale to the purposes required, or to be required, by the chancellor, under the acts heretofore passed for the relief of the said Thomas B. Clarke.

Petition to the Chancellor.—November 1st, as of May 30th, 1816.

To the Honorable James Kent, Chancellor of the State of New York. The petition of Thomas B. Clarke, of the city of New York, respectfully showeth:

That your petitioner, some time on or about the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and fifteen, presented his petition to your honor, in substance setting forth, among other things, the devise of a certain house and lot of land in the fifth ward of the city of New York, and certain land and premises in the ninth ward of the said city, in the said petition more particularly mentioned, by Mary Clarke therein mentioned, by her last will and testament, to certain trustees therein named, upon trust to receive the rents and profits thereof and pay the same to your petitioner during his natural life, and from and after his decease to convey the said premises to his lawful issue living at his death, in fee; and if your said petitioner should not have any lawful issue at the time of his death, then to convey the same to Clement C. Moore, in the said will named, and his heirs, or to such person in fee as he might by will appoint in case of his death prior to that of your petitioner; and further setting forth in substance, the release and conveyance by the said Clement C. Moore of all his estate, right and interest, claim and demand, in and to the said demised premises to your petitioner, and the parts and provisions of and in the act entitled "An act for the relief of Thomas B. Clarke," and an act supplementary thereto, in the said petition in substance recited, by the first of which acts, namely, the act entitled "An act for the relief of Thomas B. Clarke," passed on the application of your petitioner, and with the consent of the

trustees in the will aforesaid named, and of the said Clement C. Moore, before the said release and conveyance by the said Clement C. Moore of his estate and interest in the said devised premises to your petitioner, the said trustees, in the will aforesaid named, were, with their assent, discharged from the said trust, and an authority given to the chancellor to constitute and appoint one or more trustees in their place and stead, on the application of your petitioner, to execute and perform the several trusts and duties in the said will and in that act expressed and contained; and in and by which said act the trustees to be appointed under the authority thereof, or a major part of them, were directed to divide the said premises at Greenwich, in the ninth ward of the city of New York, into two equal parts, one moiety thereof to remain in trust, and the remaining moiety to be subdivided into suitable lots for the advantageous sale thereof; and the same, when so divided, and also the said house and lot in the fifth ward of the city of New York, to be sold and disposed of, and conveyances executed and given for the same to the purchasers thereof, and the nett proceeds thence arising to be put out and invested as authorized by the said act, and a given part of the interest and income of the said proceeds to be annually, in the first place, set apart, reserved and invested during the natural life of your petitioner, to create an accumulating fund for the benefit of those in remainder, being the lawful issue of your petitioner, or living at the time of his death, or in default of such issue, the said Clement C. Moore, and the residue of the said interest and income to be paid to your petitioner for his use and benefit, and the support of his family and education of his children; and the principal of the said proceeds to be held and disposed of by the said trustees according to the trusts of the will aforesaid, in that behalf, and in and by which said supplemental act passed subsequently to the release and conveyance by the said Clement C. Moore, of his estate and interest in and to the said premises to your petitioner, all the beneficial interest and estate of the said Clement C. Moore and those under him, arising or to arise by the said first mentioned act, or the said will mentioned therein, was vested in your petitioner, his heirs and assigns, and by which said supplemental act, the parts and provisions therein specified, of the said first mentioned act, were repealed, and your petitioner was authorized and empowered to execute and perform every act, matter and thing in relation to the real estate mentioned in the said original or first mentioned act, in like manner and with the like effect that trustees duly appointed under the said act might have done, and to apply the whole of the interest and income of the said property to the maintenance of his family and the education of his children; but it was further provided and enacted that no sale of any part of the said estate should be made by your petitioner until he should have procured the assent of the chancellor of this State to such sale, who should, at the time of giving such assent, also direct the mode in which the proceeds of such sale, or so much thereof as he should think proper, should be vested in the petitioner as trustee; and your said petitioner further setting forth, in and by his said petition, in substance, among other things,

that he had a large and expensive family; that the rents and profits, and income of the said trust premises, were the sole resource and dependence of your petitioner for the maintenance and support of himself and his family, and the education of his children, several of whom were of ages that required a considerable annual expenditure therein; that the said trust premises were under leases, on the several parts and parcels thereof in the said petition mentioned, and that the rents, profits, and income thereof were inadequate to the purposes aforesaid, and had been inadequate thereto ever since the marriage and settlement in life of your petitioner, and that to supply the deficiency which had been continually increasing, and provide and procure the necessary means and funds for the support of himself and his family, he had been reduced to the necessity of contracting and incurring debts; and that for those purposes and the discharge of other demands against him, he borrowed of the president and directors of the Manhattan Company the sum of four thousand four hundred dollars, in the year one thousand eight hundred and five, and had subsequently contracted other debts by purchases on credit of articles of indispensable necessity for himself and his family, and by borrowing moneys to be applied, and which he had applied to the same purposes; and that his own necessities and the interest and welfare of his family required that sale should be made of what was authorized and directed by the said first mentioned act to be sold of the said trust premises, and so much of the proceeds as might be necessary applied to the payment of the said debts of your petitioner, and the residue vested in him as trustee, under the supplemental act aforesaid, for the purposes therein mentioned; and that your petitioner expected to be able to obtain the consent of the lessees of nearly the whole of the eastern moiety of the said premises at Greenwich, to be divided by the line in the said petition mentioned and described, to the sale thereof free and discharged from the leases thereof; wherefore your petitioner, in and by his said petition, did pray your honor, the said chancellor of the State of New York, to give his assent to and authorize the sale by your petitioner of the said eastern moiety of the said premises at Greenwich, or such other moiety thereof as the chancellor might be pleased to designate and direct, and also of the said house and lot in the said fifth ward of the city of New York, for the objects and purposes in the said petition mentioned, and by the acts aforesaid authorized and contemplated, and to give such directions for and touching the said sale as he might deem meet and proper; and did further pray the said chancellor to authorize, order, and direct that so much of the nett proceeds of such sales as might be necessary for the purpose should be appropriated and applied to the payment and discharge of the said debts, so contracted and incurred by your petitioner for the purposes aforesaid, and the residue thereof vested in the name of your petitioner, as trustee as aforesaid, in such mode as the chancellor should direct, in and upon some good and productive stocks or funds of a permanent nature, or on interest upon real security, or otherwise, as might be directed by the chancellor, as by the said petition now on file as of

record in the proper office of the said court of chancery, for that purpose reference being had to the same, fully and at large may appear, and to which, for greater certainty in the premises, your petitioner prays leave to refer himself. And your petitioner further showeth, that it having, on presenting the said petition, been referred by this court, by an order made in this matter on or about the aforesaid twenty-eighth day of June, in the year of our Lord one thousand eight hundred and fifteen, to one of the masters of this court, to examine into the allegations and matters in the said petition set forth and contained, and to report thereon with all convenient speed; and Theodorus V. W. Varick, esquire, then and yet one of the masters of the said court of chancery, having taken upon him the charge of the said reference to the said master, did, in pursuance of the said order, proceed to take the examination which he was thereby directed to take in the premises, and afterwards made his report thereon, bearing date some time on or about the thirtieth day of June, in the said last mentioned year, whereby it was stated and did appear that the said master had examined into the matters and allegations set forth in the said petition, as he was directed by the said order to do, and found the same to be true, and that your petitioner was indebted, over and above the said debt of four thousand four hundred dollars to the Manhattan Company aforesaid, to the amount of five thousand four hundred dollars, and upwards; and that he, your petitioner, was not engaged in any profession or occupation, and was greatly embarrassed by his said debts; and further, that the said trust premises were under the several leases thereof, in the said report particularly specified; and in and by which said report the said master did further report and state that it satisfactorily appeared to him, the said master, that the rents and profits of the said trust estate were not, and from the local situation and state of improvement thereof, and of the said premises at Greenwich in particular, even if unincumbered by the leases thereof, could not be made adequate or sufficient for the support of the petitioner and his family, and the education of his children, even if the whole of the said rents and profits could be applied thereto, and that the same, after paying thereout the interest of the said debts of your petitioner, would be insufficient for the reasonable and proper support of your petitioner and his family, according to their situation in life, and would admit of no provision or allowance for the education of the children of your petitioner; and by which said report it further appeared, and was stated, that nearly the whole of the said eastern moiety of the said premises at Greenwich, in the ninth ward of the city of New York, to be divided by the line in that behalf mentioned in the said petition, was included in the lease by way of mortgage, executed by your petitioner as attorney for the trustees in the will aforesaid named, of and upon the premises therein described, to the president and directors of the Manhattan Company aforesaid, for the term of twenty-one years from the fifteenth day of July, eighteen hundred and five, for the purpose of securing to the said company the payment of the debt or sum of money aforesaid,

borrowed of them by your petitioner as aforesaid, with interest for the same; and that the said president and directors of the said company were willing and would consent that the premises should be sold free and discharged from their said lease thereof, and unincumbered thereby, on condition that the debts of your petitioner to the company, with the interest thereof, should be first paid or satisfactorily secured to the said company by and out of the said proceeds of such sale, and that the proper directions should be given for that purpose in the order to be made by the court in the premises, as by the said report, which was filed and now remains on file as of record in the proper office of this honorable court, in that behalf, reference being had thereto, fully and at large may appear, and to which your petitioner, for greater certainty in the premises, prays leave to refer himself. And your petitioner further showeth, that upon the coming in of the said report, that is to say, at a court of chancery held for the State of New York, at the City Hall of the city of New York, on the third day of July, in the said year of our Lord one thousand eight hundred and fifteen, the said report being read and filed, it was, on the motion of the counsel for your petitioner, among other things, ordered that the assent of the chancellor be, and thereby was, given to the sale by your petitioner of the said house and lot in the fifth ward of the city of New York, and of the eastern moiety or half part of the said premises at Greenwich, in the ninth ward of the city of New York, to be divided by the line and in the manner for that purpose mentioned in the said petition; and your petitioner was thereby authorized and directed to sell and dispose of the same under and according to the aforesaid acts of the legislature in that behalf—the said sales to be made under the direction of one of the masters of this court, and your petitioner to proceed in making the said sales and conveyances of the said premises to be sold, in the manner for that purpose in and by the said acts prescribed and directed; and it was further ordered that the purchase moneys for the said premises so to be sold be paid by the purchasers to the said master, to be disposed of by him as in the said last mentioned order after directed; and in and by the same last mentioned order it was also further ordered and directed, and his honor the chancellor did thereby authorize, order, and direct that so much of the nett proceeds to arise from such sales as might be necessary for the purpose, should be applied under the direction of one of the masters of this court, in and for the payment and discharge of the debts then owing by your petitioner, and to be contracted for the necessary purposes of his family, to be proved before the said master, and the costs, charges, and expenses of your petitioner on his aforesaid petition, in the matter aforesaid, and the proceedings had, and to be thereafter had, under or in consequence thereof; but so, however, and it was thereby further ordered and directed, that the nett proceeds of the said eastern moiety of the said premises at Greenwich aforesaid, or so much thereof as should be necessary for that purpose, should be applied in the first place, and before and in preference to any other appropriation or application thereof, to pay and satisfy to the president and directors of the Manhattan Company aforesaid, the aforesaid debt or sum of four

thousand four hundred dollars, with the interest up to the time of such payment, or such part and balance of the said debt and interest as should not have been otherwise paid or satisfied, with further orders and directions in the same last mentioned order contained, as to the residue and surplusage of the debt, moneys, and proceeds arising from the said sales after the said debts, costs and charges, and expenses discharged and paid by and out of the same, and for placing out, ordering and disposing thereof, and of the interest and income thereof, and with a further order therein contained for the master, under whose directions the said sales should be made and the debts paid, and the surplus proceeds placed out as thereby directed, to report his proceedings in the premises; and that all and every person or persons who were, or was, or might become interested therein, should have liberty to apply to this court at any time or times thereafter for any further or other orders or directions in, or touching the premises, as by the said last mentioned order in the minutes of the said court, in the proper office for that purpose remaining, or a certified copy thereof, in your petitioner's possession, reference being thereunto had, fully and at large may appear, and to which your petitioner, for greater certainty in the premises, begs leave to refer himself. And your petitioner further showeth, that the said eastern moiety or half part of the said premises at Greenwich were subdivided into suitable lots for the advantageous sale thereof, which lots being two hundred and forty full city lots, besides a number of gore lots, were offered for sale under the direction of the said Theodore V. W. Varick, the aforesaid master of this court, at the Tontine coffee-house, in the city of New York, when a few of the said lots were sold, but that the lots which were so sold were struck off at such low prices that your petitioner deemed it expedient to stop the sale thereof, and the residue of the said lots, though tried at several different times, could not be sold unless at a sacrifice of nearly one-half their true and full values. And your petitioner further showeth, that being unwilling to submit to so ruinous a sacrifice by the sale of the said lots, and having assurances of a loan to answer his exigencies on the security of the mortgage of the said lots, in case an effectual mortgage of the fee-simple thereof could be executed and given to the lenders, your petitioner proposed to apply, and was about applying to your honor, so to modify the said last mentioned order of this court as to assent to and authorize the mortgage of the said lots, instead of the sale of the same; but doubts being suggested of the power of your honor, under the acts aforesaid, to authorize the mortgage of the said premises for the purpose intended, your petitioner, in order to remove all doubts on the subject, made application to the legislature of the State of New York at their last session, for an act to authorize either the mortgage or sale of the said premises, and an act was, on or about the twenty-ninth day of March, eighteen hundred and sixteen, passed by the said legislature, entitled "An act further supplemental to an act entitled 'An act for the relief of Thomas B. Clarke,'" whereby it is in substance enacted, that your petitioner be, and he is thereby authorized, under the order heretofore granted by the chancellor, or under any subsequent order, either to

mortgage or to sell the premises, which the chancellor has permitted, or hereafter may permit him to sell, as trustee under the will of Mary Clarke, and to apply the moneys so raised by mortgage or sale to the purposes required or to be required by the chancellor, under the acts heretofore passed for the relief of the said Thomas B. Clarke, as by the said act, reference being had to the same fully and at large, may appear, and to which your petitioner, for greater certainty, prays leave to refer himself. And your petitioner further showeth, that his debts are daily increasing, both by the accumulation of interest and by new loans and purchases for the current expenses of himself and family. And your petitioner further showeth, that the president and directors of the Manhattan Company aforesaid offer to advance to your petitioner, or for his use, such sum as will be sufficient to answer all the said purposes of your petitioner, and to take a mortgage upon the said lots at Greenwich that remain unsold, as their security for the re-payment of the said advances, with interest, and of the debt which your petitioner already owes them, as hereinbefore mentioned, if your honor shall see fit to give your assent to such mortgage; wherefore your petitioner respectfully prays that your honor will be pleased to authorize, assent to, and direct your petitioner to execute and give to the said president and directors of the Manhattan Company, or such other body corporate, or person or persons, as shall be willing and agree to make the necessary advance to your petitioner in the premises, a mortgage in fee of and upon the lots remaining unsold of the aforesaid eastern moiety or half part of the premises aforesaid at Greenwich, in the ninth ward of the city of New York aforesaid, or any part thereof, for securing to the said president and directors of the Manhattan Company or other lenders, the sum or sums of money which may be advanced by them to your petitioner in the premises, together with all such sum or sums of money as may be already owing to them by your petitioner, with lawful interest for the same, and that your honor will be pleased to give such directions for and touching the said sales thereof as may appear to your honor to be meet and proper, and that your honor will be pleased to authorize, order, and direct, at the same time that the said advances and moneys to be raised by and upon such said mortgage or mortgages, or so much thereof as may be necessary for the purpose, be appropriated and applied in and for the payment and discharge of the debts of your petitioner, so contracted by him in the premises as aforesaid, with such further advances as the exigencies of himself and his family may be found to require, together with the costs, charges, and expenses of your petitioner, in his application to this honorable court on the subject or otherwise, in and about the premises; and your petitioner will ever pray, &c. T. B. CLARKE.

Sworn to before me this 27th May, 1816.
GIDEON HAWLEY, *Master in Chancery.*

J. V. N. YATES,
Of Counsel for the Petitioner.

Filed 1st of November, 1816, as of the 30th May, 1816.

Report of Master.

In Chancery. In the Matter of the Petition of Thomas B. Clarke.

STATE OF NEW YORK, *ss.*

I, the subscriber, one of the masters of this honorable court, do respectfully report, that in pursuance of an order of this court, made in the above matter, and bearing date the third day of July, in the year one thousand eight hundred and fifteen, the lands and premises at Greenwich, in the ninth ward of the city of New York, mentioned in the said petition of the said Thomas B. Clarke, were regularly advertised for sale at public auction, at the Tontine coffee-house, under the direction of the subscriber, and that on the 8th day of August, 1815, the same were offered for sale at the place aforesaid, but that in consequence of there being no bidders the sale thereof was postponed. And I do further report, that on the 8th day of January, 1816, the said lands and premises were again put up for sale at the place aforesaid, where a few lots from the eastern moiety of the lands at Greenwich, mentioned in the said petition of the said Thomas B. Clarke, to wit, lots Nos. 23, 24, 25, 26, 27, 28, 29, 30, 53, and 59, being ten lots, were sold to one Samuel Norsworthy, he being the highest bidder, for the price of one hundred and twenty-five dollars per lot, which said price, in the opinion of the subscriber, was not equal to more than half the value of the said lots; wherefore and being convinced that any further sale of the said lands and premises must be attended with a very great sacrifice of the interests of the said petitioner, the sale was by his consent and desire discontinued, since which time nothing further has been done in the premises.

All which is respectfully submitted.

THEOD. V. W. VARICK.
Master in Chy.

May 23d, 1816.
Filed 1st November, 1816, as of the 30th May, 1816.

Order of the Chancellor, Endorsed on Petition.—May 30th, 1816.

On reading and filing the within petition, together with the report of Theodorus V. W. Varick, one of the masters of this court, dated May 23d, 1816, it is ordered that the said petitioner, under the act entitled "An act further supplemental to the act entitled 'An act for the relief of Thomas B. Clarke,'" passed March 29th, 1816, be, and he is hereby authorized, so far as the assent of this court is requisite to mortgage, instead of selling the lands he was authorized to sell, in and by an order of this court, of the third day of July last, and that the moneys to be procured, and the debts to be extinguished by such mortgage or mortgages, be appropriated and adjusted in the same manner and under the same checks, and not otherwise than is prayed for in and by said order, and the said order is to apply to and govern the application of the moneys to be raised by mortgage, equally as if the same had

been raised by a sale of all or any of the lands authorized to be sold, in and by the said order.

May 30th, 1816.

J. KENT.

This order to be entered with Mr. Kip at New York.

J. K.

Filed 1st November, 1816, as of the 30th May, 1816.

Order Entered in the Minutes.—May 30th, 1816.

At a court of chancery held for the State of New York, at the city of Albany, on the thirtieth day of May, in the year of our Lord one thousand eight hundred and sixteen: Present, the Honorable James Kent, esquire, chancellor. In the matter of the petition of Thomas B. Clarke.

An order of this court having been heretofore at a court of chancery held for the State of New York, at the City Hall of the city of New York, on the third day of July, in the year of our Lord one thousand eight hundred and fifteen, made and entered in this cause in this matter, on the petition of the said Thomas B. Clarke, and the report of Theodorus V. W. Varick, one of the masters of this court, to whom it was referred, to examine into the allegations and matters in the said petition set forth and contained, and to report thereon, been heretofore, at a court of chancery, held for the State of New York, at the City Hall, in the city of New York, on the third day of July, in the year of our Lord one thousand eight hundred and fifteen, made and entered by this court in this matter, whereby it was, amongst other things therein contained, in substance, ordered that the assent of the chancellor be, and thereby was, given to the sale by the petitioner, of the house and lot in the fifth ward of the city of New York, and of the certain moiety or half part of the premises at Greenwich, in the ninth ward of the city of New York, to be divided by the line and in the manner for that purpose mentioned in the said petition; and the said petitioner was authorized and directed to sell and dispose of the same under and according to the act of the legislature in that behalf in the said petition mentioned and in part recited; the said sales to be made under the direction of one of the masters of this court, and the petitioner to proceed in making the sales and conveyances of the said premises so to be sold in the manner for that purpose in and by the said acts prescribed and directed; and that the purchase-money for the said premises so to be sold be paid by the purchasers to the said master, to be disposed of by him as thereinafter directed; and by which said order it was further ordered and directed, and his honor, the chancellor, did authorize, order, and direct, that so much of the nett proceeds to arise from such sales as might be necessary for the purpose, should be applied under the direction of one of the masters of this court, in and for the payment and discharge of the debts then owing by the petitioner, and to be contracted for the necessary purposes of his family, to be

proved before the said master, and the costs, charges, and expenses of the petitioner on his petition in the said matter, and the proceedings had, and to be thereafter had, under or in consequence thereof, with a proviso or condition in the said order contained for the payment, out of the said funds, of a certain debt in the said order mentioned, in the first place, and before and in preference to any other application thereof, and which said order contains further directions for the investment, laying out, and disposal of the residue of the said purchase-moneys, and the interest thereof, for the master, under whose direction the said sales should be made, debts paid, and surplus proceeds placed out, to report his proceedings in the premises, and that all and every person or persons who were or was or might become interested therein should have liberty to apply to this court at any time or times thereafter, for any further or other orders or directions in or touching the premises; and the said Thomas B. Clarke, having lately, that is to say, on or about the thirtieth day of May last past, presented his petition to his honor the chancellor, setting forth, among other things, that the said eastern moiety or half part of the said premises at Greenwich were subdivided into suitable lots, for the advantageous sale thereof, which lots, being two hundred and forty full city lots, besides a number of gore lots, were offered for sale under the direction of Theodorus V. W. Varick, one of the masters of this court, in the said petition mentioned, at the Tontine coffee-house, in the city of New York, where a few of the said lots were sold, but that the lots which were so sold were struck off at such low prices that he, the petitioner, deemed it expedient to stop the sale thereof, and that the residue of the said lots, though tried at several different times, could not be sold unless at a sacrifice of nearly one-half their true and fair value, and that being unwilling to submit to so ruinous a sacrifice by the sale of the said lots, and having assurances of a loan to answer his exigencies, on the security of a mortgage on ten lots, in case an effectual mortgage of the fee simple thereof could be given to the lenders, but doubts being suggested of the power of your honor, under the said acts in the said petition before mentioned, to authorize the mortgage of the said premises for the purposes intended; the petitioner, to remove all doubts on the subject, made application to the legislature at their last session for an act to authorize either the mortgage or sale of the said premises, and that an act was, on or about the twenty-ninth day of March, one thousand eight hundred and sixteen, passed by the legislature, entitled as in the said petition is mentioned, whereby it is in substance enacted that the petitioner be, and he is hereby, authorized under the aforesaid order of this court, or under any subsequent order, either to mortgage or sell the premises which the chancellor has permitted or may permit him to sell as trustee under the will of Mary Clarke, in the said petition mentioned, and to apply the money raised by mortgage or sale to the purposes required or to be required by the chancellor, under the acts passed for the relief of the said Thomas B. Clarke; and further setting forth that the debts of him, the petitioner, are daily increasing, both by the accumulation of

interest, and new loans and purchases for the current expenses of himself and family, and that the president and directors of the Manhattan Company offered to advance him a sufficient sum to answer his purposes, and to take a mortgage on the lots at Greenwich remaining unsold, as their security for their advances and interest and the debt already owing to them by the petitioner as mentioned in his petition, and, among other things, praying the chancellor to authorize, assent to, and direct the petitioner to execute and give to the said president and directors of the Manhattan Company, or such other body corporate, person or persons as should be willing and agree to make the necessary advances to him, the petitioner, in the premises, a mortgage in fee of and upon the lots remaining unsold of the aforesaid eastern moiety or half part of the premises aforesaid, at Greenwich aforesaid, or any part thereof, for securing to the lenders the sum or sums of money which may be advanced by them to the petitioner in the premises, together with sums as might be already owing to them, with lawful interest, and to authorize and direct the moneys to be raised by such mortgage or mortgages, or so much thereof as might be necessary, to be appropriated and applied in and for the payment of the petitioner's debts contracted in the premises, as mentioned in the petition, with such further advances as the exigencies of himself and family may be found to require, together with costs, which petition is filed. And on motion of Mr. Samuel Jones, jr., of counsel for the petitioner, it is ordered that the said petitioner, under the act entitled An act further supplemental to the act entitled An act for the relief of Thomas B. Clarke, passed March the twenty-ninth, one thousand eight hundred and sixteen, be, and he is hereby authorized, so far as the assent or act of this court is requisite, to mortgage instead of selling the lands and premises he was authorized to sell in and by the aforesaid order of this court, of the date of the third day of July last, or any part or parts thereof, and for that purpose to execute and give to the president and directors of the Manhattan Company, or other mortgagee or mortgagees, a mortgage or mortgages in fee, of and upon the said lands and premises, or any part thereof, remaining unsold, for securing the sum or sums of money to be advanced or lent to the petitioner, or for his use, by the president and directors of the Manhattan Company aforesaid, or other mortgagee or mortgagees, and such debt or debts as may be already owing by him to such lender or lenders, with lawful interest therefor; and it is further ordered that the moneys to be procured and the debts to be extinguished by such mortgage or mortgages be appropriated and adjusted in the same manner, and under the same checks, and not otherwise than is provided for in and by the said before mentioned order of this court, and that the said before mentioned order of this court shall apply to and govern the application of moneys to be raised by mortgage equally as if the same had been raised by a sale of all or any of the said lands and premises authorized in and by the said order to be sold; and further, that any party interested, or to become interested therein, have liberty to apply to this court at any time or times hereafter, for any further or other orders and directions in or touching the premises.

Petition to the Chancellor.—March 8th, 1817.

To the Honorable James Kent, Chancellor of the State of New York.

The petition of Thomas B. Clarke, of the city of New York, respectfully showeth:

That, notwithstanding the utmost efforts of your petitioner to relieve his circumstances under the orders heretofore made by your honor on the third day of July, eighteen hundred and fifteen, and the thirtieth day of May, eighteen hundred and sixteen, he has been unable to effect scarcely any sales, or to raise any money on mortgage without a sacrifice of property, which he did not consider himself authorized to make, and he is again compelled to solicit the aid of this honorable court. From the order made on the third day of July, eighteen hundred and fifteen, it will appear to your honor that nearly the whole of the eastern moiety of the Greenwich estate, which your petitioner has power to sell or mortgage, is now under lease to the Manhattan Company in this city, to secure the payment of the sum of four thousand four hundred dollars, nine years of which are unexpired; that the said Manhattan Company decline to advance any more money to your petitioner, and they refuse to render their said lease on any terms short of the payment of their whole demand, whereby your petitioner is placed in a very embarrassed situation, not only without the means of support, but wholly unable to satisfy his other creditors, some of whom are persons who have voluntarily come forward to the assistance of your petitioner, on the faith of his power to sell or pledge the said eastern moiety of the estate. Under these circumstances your petitioner feels himself bound from the sense of injustice to these creditors, and from the necessities of his family, to represent to your honor the propriety and expediency of dividing the said estate by an eastern and western instead of a northern and southern line, and of granting to your petitioner the power to sell or mortgage the southern instead of the eastern moiety of the said estate, in addition to the lot on Broadway. By this arrangement the northern moiety of the said estate will remain entire for the future benefit of the children of your petitioner, there being no incumbrance upon the same, affecting their interest, excepting a lease of between four or five acres thereof to Robert Lenox, esquire, executed by the testatrix in her lifetime, and which will expire in about fifteen months. That your petitioner has sold but ten of two hundred and thirty lots, or thereabouts, which compose the eastern division of the said estate, and those ten fall within the said southern moiety. Your petitioner therefore humbly prays that your honor will grant him permission either to sell or mortgage the southern division of the said estate, or such parts of it as may be necessary, together with the said lot in Broadway, subject to such restrictions as your honor may think fit to impose, in order that your petitioner may be able to pay and satisfy his said debts. And in case your petitioner should not be able to meet with a ready sale for the said property, that he may be allowed to convey certain lots of the

said southern moiety to his creditors in satisfaction of his said debts at a valuation to be approved by one of the masters of this court.

And your petitioner will ever pray, &c.

T. B. CLARKE.

STATE OF NEW YORK, *ss:*

Thomas B. Clarke, being duly sworn, says that the facts set forth in the above petition, to which he has subscribed my name, are true, and further saith not.

T. B. CLARKE.

Sworn February 11th, 1817, before me,
JAMES A. HAMILTON,
Master in Chy.

Filed 8th March, 1817.

Order of Reference.—March 8th, 1817.

At a court of chancery, held for the State of New York, at the City Hall, in the city of New York, on the eighth day of March, in the year of our Lord one thousand eight hundred and seventeen; present, the Honorable James Kent, esquire, chancellor. In the matter of the petition of Thomas B. Clarke.

On reading and filing the petition of Thomas B. Clarke, setting forth that nearly the whole of the eastern moiety of the Greenwich estate mentioned and referred to in the orders heretofore made respecting the same, bearing date the third day of July, eighteen hundred and fifteen, and the thirtieth day of May, eighteen hundred and sixteen, and which the said petitioner was authorized to sell or to mortgage, was subject to a lease to the Manhattan Company in the city of New York, to secure the payment to them of the sum of four thousand four hundred dollars, nine years of which lease were still unexpired; that the said Manhattan Company declined to advance any more money to the petitioner, and refused to surrender the said lease on any terms short of the actual payment of the whole demand, whereby the petitioner was placed in a very embarrassed situation, not only without the means of support, but wholly unable to satisfy his other creditors, some of whom are persons who have voluntarily come forward to the assistance of the petitioner on the faith of his power to sell or pledge the said eastern moiety of the said estate; that he has not been able to make scarcely any sales or to raise any money upon mortgage without a sacrifice of property which he did not consider himself warranted to make, that the pressure of his debts and the necessities of his family require some measures for their relief, and representing the propriety and expediency of dividing the said estate by an eastern and western instead of a northern and southern line, and of granting to the said petitioner the power to sell or mortgage the southern instead of the eastern moiety of the said estate in addition to the lot in Broadway, described in the said order of the third of July, eighteen hundred and fifteen, by which arrangement the

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northern moiety of the said estate would remain entire for the future benefit of his children, the same being subject to no other incumbrance affecting their interest, excepting a lease of between four and five acres thereof to Robert Lenox, esquire, executed by the testatrix in her lifetime, and which will expire in about fifteen months; that the said petitioner has sold but ten of two hundred and thirty lots or thereabouts, which compose the said eastern division, and that those ten lots fall within the said southern moiety of the said estate; whereupon the said petitioner prays permission either to sell or mortgage the said southern division of the said estate, or such parts of it as may be necessary, together with the said lot in Broadway, subject to such restrictions as this court may think fit to impose, in order that the petitioner may be able to pay and satisfy his said debts, and in case the petitioner should not be able to meet with a ready sale for the said property, that he might be allowed to convey certain lots of the said southern moiety to his creditors in satisfaction of his said debts, at a valuation to be approved of by one of the masters of this court; it is thereupon, on motion of Mr. Samuel Jones, junior, solicitor for the petitioner, ordered, that it be referred to one of the masters of this court to inquire whether any of the property sold or mortgaged by the said Thomas B. Clarke is situated within the said northern moiety of the said estate, the same being divided as nearly as may be by a line running from east to west through the said estate, and that he report thereon with all convenient speed.

Master's Report.—March 11th, 1817.

In Chancery. In the matter of the Petition of Thomas B. Clarke.

STATE OF NEW YORK, *ss.*

In pursuance of a decretal order of this honorable court, made in the above matter, bearing date the eighth day of March, in the year of our Lord one thousand eight hundred and seventeen, by which, among other things, it was ordered, adjudged, and decreed, that it be referred to one of the masters of this court to inquire whether any of the property sold or mortgaged by the said Thomas B. Clarke is situated within the northern moiety of the estate described in the said order, the same being divided as nearly as may be by a line running from east to west through the said estate; and that he report thereon with all convenient speed; now, therefore, I, the subscriber, one of the masters of this honorable court, do report, that no part of the property sold or mortgaged by the said Thomas B. Clarke is situated within the northern moiety of the estate described in the said order, the same being divided as nearly as may be by a line running from east to west, through the said estate, which line will pass through a street called Twenty-sixth street.

All which is most respectfully submitted.

JAMES A. HAMILTON,
Master in Chy.

March 11th, 1817.

Filed 19th March, 1817, as of the 15th March, 1817.